

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In Re:	)	MPC 15-0203	MPC 110-0803
	)	MPC 208-1003	MPC 163-0803
	)	MPC 148-0803	MPC 126-0803
	)	MPC 106-0803	MPC 209-1003
David S. Chase	)	MPC 140-0803	MPC 89-0703
	)	MPC 122-0803	MPC 90-0703
Respondent	)		MPC 87-0703

**MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO
REINSTATE LICENSE AND DISMISS SUPERCEDING SPECIFICATION
OF CHARGES**

Apparently unable to muster a defense to the 136 charges of unprofessional conduct leveled against him, Respondent seeks to avoid accountability for the conduct alleged by asking the Vermont Medical Practice Board ("Board") to dismiss the State's Specification of Charges and reinstate his license. Respondent asserts two reasons for his motion. First, Respondent accuses the State of falsifying evidence based on the deposition testimony of Amy Landry, a former staff person of Respondent. Second, Respondent accuses the State of unethical conduct and violating his due process rights by requesting that witnesses provide information to Respondent's counsel by deposition rather than through informal interview.

The Board must deny the Respondent's motion. As a threshold matter, the Board does not have statutory authority to dismiss the Specification of Charges. Even if the Board possessed such statutory authority, the Respondent has provided neither the legal authority nor the factual basis for such an extraordinary request. Minor, immaterial discrepancies between Ms. Landry's deposition testimony and

the Specification of Charges or affidavit are an insufficient basis to dismiss the charges or reinstate Respondent's license. Even if the Board excluded the ten paragraphs of the Specification of Charges attributed to Ms. Landry, the remaining four hundred and sixty one paragraphs are sufficient to require a hearing and sustain the Board's summary suspension of Respondent's license.

Equally without merit is Respondent's claim that his due process rights have been violated by the State's request that information from witnesses be obtained by Respondent through deposition rather than informal interview outside the State's presence. The State's request was simply that--a request. The request did not prevent Respondent's counsel from contacting any of the witnesses and did not preclude the witnesses from speaking with Respondent's counsel. More importantly, Respondent does not cite, nor could he, to any authority that supports Respondent's assertion that he has a due process right in an administrative proceeding to interview witnesses informally and outside the presence of the State. Not even the numerous criminal cases, wholly inapposite to an administrative proceeding, upon which Respondent mistakenly relies, support the Respondent's assertion. The State's request for depositions was neither unconstitutional nor unethical.

The Board must not only deny the Respondent's motion but also deny it as frivolous. Respondent misrepresents the record, asserts due process rights that simply do not exist and provides no relevant authority to support any of his arguments. The Respondent's arguments are not only patently frivolous, the

arguments are reckless in their unsupportable accusations of dishonesty and unethical conduct against the Board Investigator and Counsel for the State. The Respondent's motion not only lacks persuasion but lacks merit as well. The Respondent's motion must be denied as frivolous.

I. THE BOARD IS WITHOUT AUTHORITY TO PROVIDE THE REMEDIES REQUESTED BY RESPONDENT.

As a threshold issue, the Board must consider whether it can grant the relief requested by Respondent. Respondent has not pointed the Board to any statutory authority that grants the Board the power to dismiss the charges. In the absence of such authority, the reinstatement of Respondent's license (which the Board clearly has the authority to do) would be short-lived. The Specification of Charges, excluding the Landry paragraphs, are sufficient to sustain a summary suspension. If the Board, somehow, accepted Respondent's baseless accusation of falsification against the Board Investigator and reinstated Respondent's license on that basis, the State would immediately move for summary suspension based on the remainder of the Charges. The Board would be hard-pressed to find that the conduct contained in the remaining allegations in the Charges does not constitute an immediate threat to the public, health, safety and welfare.

In order for the Board to dismiss the charges, there must be statutory authority for the Board to grant such relief. The rule that has been stated by the Vermont Supreme Court is that "the Board, as an administrative body, 'has only such powers as are expressly conferred by upon it by the Legislature, together with such incidental powers expressly granted or necessarily implied as are necessary to

the full exercise of those granted.'" *Perry v. Medical Practice Board*, 169 Vt. 399, 403 (1999)(citations omitted). Nowhere in the Board's enabling legislation is the authority to simply dismiss charges. Respondent has failed to give the Board a legal basis to support his request for dismissal of the charges.

The only portion of the Board's enabling statute that would colorably support Respondent's argument is 26 V.S.A. §1361(c). That statute reads as follows:

If the person complained against is found not guilty, or the proceedings against him are dismissed, the board shall forthwith order a dismissal of the charges and the exoneration of the person complained against.

Notwithstanding the phrase "proceedings against him are dismissed," the statute does not grant the Board the power to dismiss charges. The only logical interpretation of the statute is that the Board must enter an order of dismissal if *the State* dismisses proceedings against the Respondent. If the Board could dismiss the proceedings on its own, the statutory mandate to then order dismissal would be superfluous and contrary to principles of statutory construction. *In Re Estate of Cote*, 2004 VT 17, ¶13 (February 13, 2004)(presumption in statutory construction is that language is inserted advisedly by Legislature and not intended to create surplusage).

More importantly, imputing to the Board an implied power to dismiss charges of unprofessional conduct without hearing is in direct derogation of the Board's duty to protect the public. *See Perry*, 169 Vt. at 403 (purpose of the Board's regulation of medical profession is protecting the public). As noted by Respondent,

these charges against Respondent are the result of an investigation by a committee of the Board, a determination by the Attorney General's office that there exists a basis for charging unprofessional conduct with a certification by the Board Secretary that such a basis exists. It would not serve the protection of the public if the Board, without holding a public hearing on charges already made public, could simply dismiss the charges. The dismissal of public charges without a hearing in this case, especially for the flimsy reasons put forth by Respondent, would only create the mistaken perception that the Board protects doctors rather than regulates the profession in the public interest.

In the absence of a complete dismissal of the charges, the reinstatement of Respondent's license would be fleeting. The State would immediately seek a summary suspension based on the Superceding Specification of Charges. The Board cannot adopt the same myopic view of the Charges from which Respondent suffers. While Ms. Landry's affidavit was important to the State's motion for summary suspension, the nature of the case has changed since then. Ms. Landry is neither the State's "star witness" (as Respondent has characterized her) nor the cornerstone of the 136 counts of unprofessional conduct. Instead, the true foundation of the State's Charges are thirteen former patients of Respondent. The experiences of these patients in their interaction with Respondent included some or all of the following:

- Undue pressure to undergo cataract surgery that was later to be found unnecessary;

- False diagnoses of dense nuclear cortical cataracts;
- False or misleading recording of test results to justify unnecessary surgery;
- Manipulation of test results to justify unnecessary surgery;
- False documentation that second opinions were given;
- Discouraging the patient from getting a second opinion;
- Performing visual tests after eyes were dilated to obtain results that would justify unnecessary surgery.

In addition to the experiences of the thirteen former patients, Respondent himself acknowledges that he is the subject of both federal and State criminal investigations based on his treatment of patients. Given the Charges and surrounding circumstances the Board could not justify a full reinstatement of Respondent's license and would have to continue the summary suspension. Respondent has not provided the legal basis for the Board's authority to grant the remedy that Respondent seeks and the motion must be denied.

II. BOARD INVESTIGATOR DID NOT FALSIFY THE LANDRY AFFIDAVIT AND MS. LANDRY HAS BEEN CONSISTENT IN THE SUBSTANCE OF HER TESTIMONY.

Assuming, *arguendo*, the Board had the power to dismiss the charges, the Respondent has not provided to the Board a sufficient basis for the Board to exercise that power or to reinstate Respondent's license. Respondent argues that four statements made by Ms. Landry were recanted in her deposition testimony and therefore the State based its summary suspension motion and the Charges on false

evidence. Respondent's Memorandum in Support of Motion to Reinstate License and Dismiss Charges, p.2 (hereinafter cited to as "Resp. Mem., p. __"). Those statements are:

1. Respondent intentionally crafted records to force patients into cataract surgery;
2. Respondent placed a script in his in his exam room and gave each patient the same spiel about cataracts;
3. Respondent required technicians to record CST/BAT results on post-it paper;
4. Respondent falsified the chart of Helene Nordstrom by stating Ms. Nordstrom wanted cataracts removed.

The statements identified by the Respondent are, at best, minor discrepancies and do not support the Respondent's allegation that the Board Investigator falsified the Landry affidavit. Further a careful reading of Ms. Landry's deposition demonstrates quite clearly that her testimony was consistent with her affidavit in her assertions that: (1) she believed Respondent gave the same speech to patients in order to encourage them to undergo cataract surgery; (2) that the index card in the scribe room contained the key elements of that standard speech; and, (3) that Respondent placed the wrong test results in the patients' chart to give a misleading measure of visual acuity.

First, Respondent's accusation that the Board Investigator falsified Ms. Landry's affidavit with respect to the treatment of Helene Nordstrom has no basis in reality. The State has never alleged, either in the Summary Suspension Motion

or the Superceding Specification of Charges, and Ms. Landry did not state in her affidavit, that she was involved in Helene Nordstrom's care or actually witnessed Respondent falsify Ms. Nordstrom's chart. Instead, both Ms. Landry and the State based their assertion that Respondent entered false and misleading test results in the chart based on Respondent's practice of entering the CST/BAT results in the visual acuity area of the chart where Snellen results are entered. The practice of entering test results in the wrong portion of the chart explains the inconsistency between Respondent's measure of Helene Nordstrom's visual acuity and Dr. Morhun's results for visual acuity.

Second, the State will concede there is a minor inconsistency between the State's characterization of Ms. Landry's affidavit in the Superceding Specification of Charges and Ms. Landry's deposition testimony regarding the third statement identified by the Respondent. The State did misinterpret the affidavit as stating that CST/BST were recorded on post-it notes but the affidavit was not falsified by the Board Investigator. What Ms. Landry makes clear in her deposition is that the Snellen results were recorded on post-it notes not CST/BAT results. Deposition of Amy Landry, p. 22, excerpts of which are attached hereto as Exhibit 1 (Hereinafter "Landry Dep., pp __-__"). Of course which test results were recorded on post-it notes is not the ultimate issue. The substance of the State's allegations and Ms. Landry's affidavit remain accurate—Respondent manipulated test results to achieve a certain result, i.e. justification for unnecessary cataract surgery.

Finally, Respondent relies on mere semantic differences between the affidavit and the deposition to accuse the Board Investigator of falsifying the affidavit with respect to the remaining two statements. In her deposition Ms. Landry states she did not use the words “spiel,” “script,” and “crafted”. Landry Dep., pp. 24, 35. However, Ms. Landry reaffirmed in her deposition that she believed Respondent “said the same things about cataract surgery” (Landry Dep., p. 205) and reaffirmed that she had given the Board Investigator statements that would support the use of the word “spiel.” Landry Dep., p. 205. For example, Ms. Landry stated in her deposition that it seemed to her that Respondent was giving a diagnosis of dense nuclear cataracts before he had an opportunity to examine the patient's eyes. Landry Dep., pp 40-41. In other words, Respondent had prepared his diagnosis before the examination.

Ms. Landry also reaffirmed in her deposition that, though not using the word “script” to identify the index card in the scribe room, the card contained the important points that Respondent covered in his standard speech to cataract patients. Landry Dep., p. 206. Finally, though Ms. Landry did not use the word “crafted,” she believed the CST/BAT results were recorded in the wrong portion of the chart so that the patient “appeared to have worse vision than they had.” Landry Dep. P. 206.

The substance of Ms. Landry’s affidavit and deposition testimony are consistent. There is no foundation to the Respondent’s reckless accusations of dishonesty on the part of the Board Investigator. Indeed, Ms. Landry signed

another affidavit in a civil proceeding regarding Respondent that is substantively and almost verbatim the same as the affidavit in this proceeding. Affidavit of Amy Landry, *Brundage v. Chase*, Chittenden Superior Court, Dk. No. S1002-03CnC, attached hereto as Exhibit 2. The semantic differences and minor discrepancies are simply insufficient to sustain the Respondent's accusations against the Board Investigator of falsifying the affidavit.

For reasons argued in Section I, even if the Board accepted Respondent's argument, there is still no basis for dismissing the charges. The thirteen former patients upon which the State has based most of the 136 counts of unprofessional conduct have no connection to the Landry affidavit. Further, the case law relied upon Respondent is simply inapposite. The cases cited to by Respondent are criminal appellate cases that deal with sustaining a conviction based on false evidence. That is not the case here. Respondent has not pointed to a single case where, in an administrative process such as this one, charges of professional misconduct have been dismissed because some of the allegations of misconduct may have questionable support in fact. The remedy for Respondent is to seek to have the testimony omitted at hearing or underscore the perceived factual weaknesses of the State's case on cross-examination.

**III. RESPONDENT HAS NO DUE PROCESS RIGHT TO
INTERVIEW WITNESSES OUTSIDE THE PRESENCE OF
THE STATE AND THE STATE HAS NOT OBSTRUCTED
RESPONDENT ACCESS TO WITNESSES.**

The Respondent's accusation that the State has obstructed his access to witnesses and his assertion of a due process right to interview witnesses informally outside the presence of the State are as baseless as the Respondent's charges of falsification of the Landry affidavit. The State has not obstructed Respondent's access to witnesses. The letter sent by the State to witnesses merely requested that they give their information to the Respondent in the manner provided for by the Administrative Procedure Act—deposition. The State's letter could not and did not preclude the Respondent's counsel from contacting the witnesses. Indeed, Respondent's counsel has interviewed witnesses informally, including Amy Landry. Nor did the letter preclude the witnesses from speaking with Respondent's counsel. The letter was a request—nothing more, nothing less.

The Respondent has asserted that the State's letter has tainted the witnesses and demonized the witnesses' perception of Respondent. There is, of course, no evidence to support such charges. As with the other arguments in Respondent's motion, these charges are conclusory and without foundation in law or fact. The witnesses in this case had interactions with Respondent long before they received the State's letter. The witnesses have, therefore, had ample opportunity to form their opinions of Respondent, either positive or negative, without being influenced by the State's letter.

More importantly, Respondent has no due process right to interview witnesses informally outside the presence of the State. If there existed such a right, witnesses would be compelled to talk to Respondent's counsel, which they are not. Unless subpoenaed for deposition or hearing, the witnesses in this case are not compelled to speak with either Respondent or the State. Nothing in the case law supports the Respondent's assertion that his subjective desire to informally interview witnesses rather than depose them is protected by the Due Process Clause. In fact, there is no constitutional right to prehearing discovery in administrative proceedings of any kind, including the unilateral informal interviews of witnesses. See *State of West Virginia ex rel. Hoover v. Smith*, 482 S.E.2d 124, 129 (W.Va. 1997) and cases cited therein; see also *In the Matter of Brij N. Sihna*, 457 N.Y.S.2d 603, 604 (App. Div. 3d, 1982)(due process considerations do not require full panoply of procedural tools available to civil litigants). The Respondent has only the statutory right to take depositions which is merely what the State's letter requested of the witnesses.

In an administrative process such this one the only due process rights Respondent is entitled to is notice and opportunity for a hearing at which he can cross-examine witnesses under oath. *Vermont Real Estate Commission v. Martin*, 132 Vt. 309, 311 (1974). The legal authority relied upon by Respondent is misplaced. The cases cited by Respondent only stand for the proposition that *in a criminal case* Due Process prohibits the State from blocking a *criminal defendant's* access to a third party witness. First, as explained above, the State has not blocked

the Respondent's access to these witnesses. Second, and more fundamentally, Respondent cites no authority for his assertion that the Due Process analysis of those criminal cases applies to the administrative process. There is no support in logic or law for Respondent's bald assertion that the mere fact that criminal charges are being investigated by other agencies transforms the Board's procedures into an extension of the criminal process. Resp. Mem., p.22, n..4.

Respondent's arguments that his access to witnesses has been blocked and his due process rights violated by the State's letter are without merit and the Respondent's motion to dismiss and reinstate must be denied.

IV. RESPONDENT'S CHARGES OF UNETHICAL CONDUCT AGAINST STATE'S COUNSEL ARE BASELESS AND NOT PROPERLY BEFORE THIS BOARD.

In his memorandum, the Respondent has accused the State's counsel of unethical conduct in sending the State's letter to witnesses. Respondent bases his accusation solely on his interpretation of Vermont Rule of Professional Conduct 3.4 (f), without any supporting authority. As has already been established above, there is no foundation for the Respondent's accusations of unethical conduct. The charge of unethical conduct against the State's counsel, like the charge of falsification leveled against the Board Investigator, is mere puffery. The accusations are inserted to shift the Board's focus away from the charges of unprofessional conduct against Respondent and create the illusion there is more substance to Respondent's motion than actually exists.

Though the Board has no jurisdiction to decide if State's counsel engaged in unethical conduct, the lack of merit to the Respondent's accusation is indicative of the overall evanescent quality of the Respondent's motion and memorandum. If Respondent truly believed the State's counsel engaged in unethical conduct then why not file a complaint with the appropriate body—i.e., the Professional Responsibility Board? In a letter to State's counsel, the Respondent's counsel gave the following explanation as to why such a course was not followed:

[W]e believe that the State's ethical violation was clear-cut, serious, and highly prejudicial to [Respondent]. As a result we had no choice but to include it as one of the bases of the motion. However, ...we do not believe this ethical violation raises a substantial question as to [the State's] honesty, trustworthiness, or fitness as a lawyer in other respects as required to trigger the reporting requirements of Vermont Rule of Professional Conduct 8.3(a). As a result, we have not reported the State's ethical violation to the appropriate professional authority.

Letter of Eric Miller to Joseph L. Winn, February 17, 2004 (Exhibit 3).

The explanation proffered by Respondent's counsel makes no logical sense. If the alleged unethical conduct of the State's counsel is so egregious that it violates Respondent's due process rights, requires the dismissal of the charges and reinstatement of Respondent's license, is "clear-cut" and "serious", and justifies the public accusation of unethical conduct then how does such conduct not warrant a confidential complaint to the Professional Responsibility Board. There are two explanations. First, if Respondent's counsel followed the proper course of filing a confidential complaint with the appropriate body, they would be foreclosed from using the accusation as a diversionary tactic in the memorandum. The clear

purpose of the Respondent's accusation is an attempt to infuse anemic arguments with an unfounded charge of unethical conduct against State's counsel.

Second, Respondent's counsel did not file a complaint with the Professional Responsibility Board because they knew the complaint could not be supported. In the letter of February 17, 2004 Respondent's counsel states the accusation of unethical conduct comes "after careful research and consideration." Exhibit 3. Yet after all the "careful research" Respondent has not cited to single case or Professional Responsibility Opinion from any jurisdiction that supports the Respondent's interpretation of Vermont Rule of Professional Conduct 3.4 (f).

Moreover, the State's counsel specifically requested from Respondent's counsel an explanation as to how the State's letter to witnesses was "improper" when Respondent's counsel first made such an allegation in his December 11, 2003 letter to State's Counsel (Exhibit E of Respondent's Exhibits). In a letter also dated December 11, 2003, State's counsel requested that "If the State's communication with the witnesses violates some statute, regulation or rule please cite to me such statute, regulation, or rule." Letter of Joseph L. Winn to Eric Miller, December 11, 2003 (Exhibit 4). Respondent's counsel did not respond to the State's request.

The Board must see the Respondent's accusation of unethical conduct for what it is—a tactic to divert attention from the 136 counts of unprofessional conduct that are before the Board.

**V. RESPONDENT'S MOTION MUST NOT ONLY BE DENIED
BUT MUST ALSO BE DENIED AS FRIVOLOUS.**

The tactic being employed by Respondent in his motion is one all too common in criminal proceedings. Unable to defend himself against the charges, the criminal defendant will put the process on trial as a diversion. Unfounded accusations of prosecutorial and police misconduct will be tossed around indiscriminately in the hope that the judge or the jury will be swayed from the real inquiry—did the defendant do what he is accused of doing? Though used frequently, it is not a tactic the Board need indulge. The Respondent's motion should not only be denied but also be denied as frivolous.

A filing is considered frivolous "where it lacks an arguable basis either in law or in fact." *Nietzke v. Williams*, 490 U.S. 319, 325 (1989). The Respondent's motion is not well grounded in law or fact. The Respondent asserts rights which do not exist, cites irrelevant case law as authority for conclusory arguments, and interjects the memorandum with unfounded accusations of dishonesty and unethical conduct against the Board Investigator and the State's counsel. The memorandum is replete with illusory legal arguments and rhetorical pyrotechnics, all with the purpose of avoiding a defense to the 136 charges of unprofessional conduct and avoiding responsibility for the alleged conduct.

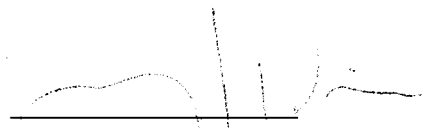
To employ a cinematic metaphor, the Board must look beyond the phantasms and the fireworks of the pending motion and pay attention to the man behind the curtain. It is not the State's counsel, or the Board Investigator, or Amy Landry, who are responsible for the situation in which Respondent finds himself. The

Respondent brought himself to this place. The Board cannot allow the Respondent to avoid defending himself against the 136 counts of unprofessional conduct based on arguments and accusations that are sheer gossamer.

WHEREFORE, the State asks that the Respondent's motion be **DENIED AS FRIVOLOUS**.

Dated at Montpelier, Vermont this 4 day of March, 2004.

**WILLIAM SORRELL
ATTORNEY GENERAL
STATE OF VERMONT
BY**



Joseph L. Winn
Assistant Attorney General

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

RE:)
)
) DOCKET NO. MPC 15-0203
 DAVID S. CHASE, M.D.)

DEPOSITION
- of -
AMY M. LANDRY

taken on behalf of the Respondent on
 Monday, December 22, 2003, at the offices of
 Sheehy, Furlong & Behm, P.C.,
 30 Main Street, Gateway Square, Burlington,
 Vermont, commencing at 9:29 a.m.

APPEARANCES:

ON BEHALF OF THE STATE:
 JOSEPH L. WINN, ESQUIRE
 Vermont Attorney General's Office
 109 State Street
 Montpelier, Vermont 05609-1001

ON BEHALF OF THE RESPONDENT:
 ERIC S. MILLER, ESQUIRE
 Sheehy, Furlong & Behm, P.C.
 30 Main Street, P. O. Box 66
 Gateway Square
 Burlington, Vermont 05402-0066

ALSO PRESENT: DAVID S. CHASE, M.D.
 BRIANNE E. CHASE
 JOHANNA MASSE, RMR, CRR
 COURT REPORTERS ASSOCIATES
 117 BANK STREET
 BURLINGTON, VERMONT 05401
 (802) 862-4593

1 STIPULATIONS
 2 IT IS HEREBY STIPULATED AND AGREED
 3 by and among Counsel for the respective parties that
 4 this deposition is being taken in accordance with the
 5 Vermont Rules of Civil Procedure; that all objections
 6 as to Notice of this deposition are hereby waived;
 7 that all objections except as to form are reserved
 8 until the time of trial; and that the witness has
 9 reserved the right to read and sign the deposition
 10 after review by counsel.

* * *

12 MONDAY, DECEMBER 22, 2003; 9:29 A.M.
 13 (Deposition Exhibit Nos. 1-15 were
 14 marked for identification prior to the
 15 commencement of the deposition.)

16 AMY M. LANDRY,
 17 having been first duly sworn, testified as follows:

18 EXAMINATION

19 BY MR. MILLER:

20 Q. Good morning, Amy. I'm Eric Miller, and as you
 21 know, I am Dr. Chase's attorney in the Medical
 22 Practice Board proceeding.
 23 A. Um-hum.
 24 Q. Could you just state your full name for the
 25 record here.

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25	(The original exhibits are attached.)	

1 A. Yes. Amy Marie Landry.
 2 Q. Amy, have -- we're here in a deposition in the
 3 Medical Practice Board proceeding. Have you ever been
 4 deposed before?
 5 A. No.
 6 Q. Okay. Let me tell you just a little bit about
 7 it. The -- it's relatively straightforward. I'm
 8 going to ask you a number of questions. You've been
 9 sworn. You're under oath.
 10 A. Um-hum.
 11 Q. And so it's simply your obligation to answer them
 12 truthfully and to the best of your ability during the
 13 deposition. The reporter's going to take it all down.
 14 A. Yup.
 15 Q. And afterwards you'll be given a written copy of
 16 the transcript that you can look at and read and
 17 correct any mistakes that were made in the
 18 transcription.
 19 It's possible that Mr. Winn may object to
 20 some of my questions during the deposition. If he
 21 objects and you understand the question, you can go
 22 ahead and answer it. If for some reason you don't
 23 understand a question, whether it's objected to or
 24 not, just let me know and I'll be happy to rephrase it
 25 in a way that hopefully does make sense to you. Does

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1 that make sense?
 2 A. Um-hum. Yes.
 3 Q. And one of the rules is when you answer
 4 questions, if it's a yes-or-no question, you need to
 5 answer yes or no rather than uh-huh or uh-uh, because
 6 those two look a lot alike --
 7 A. Okay.
 8 Q. -- in a written transcript. So try to say yes or
 9 no. And if you forget, as most of us do during
 10 conversation, either I will remind you or the court
 11 reporter will remind you.
 12 If you don't ask me to clarify a question,
 13 I'm going to presume that you do understand it and are
 14 answering it to the best of your ability. Is that
 15 okay?
 16 A. Yes.
 17 Q. I'll be asking you during the deposition what you
 18 know. I'm not going to be asking you to guess or to
 19 tell me what you think might be true if you don't
 20 know. So I'm going to tell you right now, if you
 21 don't know, please tell me that you don't know. All
 22 right?
 23 A. Yes.
 24 Q. And if you are guessing rather than telling me
 25 something you know to be true, please tell me that, as

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1 background in a little more detail later.
 2 A. Um-hum.
 3 Q. But -- and you can set Exhibit 1 aside. We're
 4 done with that now.
 5 A. Okay.
 6 Q. But I want to go through just a couple of things
 7 briefly --
 8 A. Um-hum.
 9 Q. -- at the outset, okay?
 10 A. Yes.
 11 Q. First of all, where do you live?
 12 A. In Colchester.
 13 Q. What's your address?
 14 A. 119 Ira Allen Court.
 15 Q. And what's your telephone number there?
 16 A. 864-5050.
 17 Q. Where do you work now?
 18 A. Dr. Ch- -- Dr. Cavin's office. Sorry.
 19 Q. And how long have you worked there?
 20 A. Seven months? I don't know. Since -- since
 21 August.
 22 Q. Since August of 2003?
 23 A. Yes.
 24 Q. How far did you go in school?
 25 A. LPN school but did not graduate.

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1 well. Okay?
 2 A. Yes.
 3 Q. If you need to take a break at any time, just let
 4 me know, and we'll do that.
 5 And with that, we'll get started.
 6 A. Okay.
 7 Q. I'm going to hand you what has been marked as
 8 Landry Deposition Exhibit 1. This is a copy of the
 9 subpoena that you received. Did you get a copy of
 10 this last week?
 11 A. Yes.
 12 Q. And are you here pursuant to this subpoena?
 13 A. Yes.
 14 Q. And this subpoena asked you, among other things,
 15 to bring with you any documents that you had relating
 16 to Dr. Chase or his medical practice. Did you see
 17 that request?
 18 A. Yes.
 19 Q. And did you have any documents that fit that
 20 request?
 21 A. No.
 22 Q. And so did you bring any documents with you
 23 today?
 24 A. No.
 25 Q. I'm going to go through your educational and work

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1 Q. Okay.
 2 A. And some college, so ...
 3 Q. And some college but also didn't get a degree?
 4 A. No. Didn't want to pursue anything at that time,
 5 so ...
 6 Q. Okay. So you got a high school diploma, correct?
 7 A. Yes.
 8 Q. From Burlington High School?
 9 A. Yes.
 10 Q. And then you did some work as -- in nursing
 11 school but didn't get a degree there; is that right?
 12 A. It was a certificate. No.
 13 Q. And you didn't get -- did you get the certificate
 14 or not?
 15 A. No. Didn't end up wanting to pursue that, so ...
 16 Q. Okay. And then you did a little bit of college
 17 work but decided not to pursue that, either; is that
 18 right?
 19 A. I was just taking courses.
 20 Q. At CCV?
 21 A. Yeah.
 22 Q. Before you went to work for Dr. Chase, did you
 23 have any training in ophthalmology?
 24 A. No.
 25 Q. Did you have any training in eye care more

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1 generally?
 2 A. No.
 3 Q. Did you work as a tech or a scribe in any eye
 4 doctor's office?
 5 A. No.
 6 Q. Did you have any informal training in
 7 ophthalmology or eye care?
 8 A. No.
 9 Q. You received on-the-job training in Dr. Chase's
 10 office, correct?
 11 A. Yes.
 12 Q. And you worked as a tech and a scribe there; is
 13 that right?
 14 A. Yes.
 15 Q. Did you also work for a short time in the OR, as
 16 well?
 17 A. Yes.
 18 Q. The training that you got there was from
 19 Dr. Chase's staff; is that right?
 20 A. Yes.
 21 Q. Was it from Dr. Chase directly or from his staff?
 22 A. Staff.
 23 Q. Dr. Chase's staff didn't train you to look
 24 through the slit lamp to examine patients' eyes for
 25 abnormalities or any other eye conditions, did they?

Page 10

1 A. No.
 2 Q. Okay. So you weren't trained in doing that?
 3 A. No.
 4 Q. You weren't trained in making a decision on when
 5 to offer a patient cataract surgery?
 6 A. No.
 7 Q. You weren't trained on diagnosing a patient as to
 8 whether or not they had or didn't have cataracts?
 9 A. No.
 10 Q. And you didn't perform that task as part of your
 11 job there at Dr. Chase's office?
 12 A. No.
 13 Q. Were you educated in what the medical standards
 14 were as to when cataract surgery is appropriate for a
 15 particular patient?
 16 A. I believe so.
 17 Q. Okay. What do you -- what is the standard for
 18 when cataract surgery is appropriate?
 19 A. 20/50.
 20 Q. Can you explain that a little bit more?
 21 A. When their Snellen is greater -- equal or greater
 22 to 20/50 for the Snellen.
 23 Q. So it's equal or greater. And I just want to
 24 make sure I understand you, so correct me if I'm
 25 wrong. Your understanding is that the standard for

Page 11

1 cataract surgery is when their Snellen vision is 20/50
 2 or worse, they may be a proper candidate for cataract
 3 surgery?
 4 A. Yes.
 5 Q. What's the source of your knowledge as to that
 6 standard?
 7 A. I don't know. I'm not sure, to be honest with
 8 you.
 9 Q. Is that something you learned before you came to
 10 work in Dr. Chase's office?
 11 A. No.
 12 Q. So it's something that you think you picked up
 13 while you were in Dr. Chase's office?
 14 A. Yes. I just don't know who told me that.
 15 Q. Do you remember reading it anywhere?
 16 A. I don't know.
 17 Q. So you learned it either from reading it or from
 18 hearing it from someone in Dr. Chase's office during
 19 your time there?
 20 A. Yes.
 21 Q. Was it Dr. Chase who told you that?
 22 A. I don't know.
 23 Q. I want to move first to the topic of how you came
 24 to be a witness in this case.
 25 Prior to leaving Dr. Chase's employment,

Page 12

1 had you had any contact with the Medical Practice
 2 Board?
 3 A. No.
 4 Q. Had you had any contact prior to leaving his
 5 office with any law enforcement authorities?
 6 A. No.
 7 Q. Now, you left Dr. Chase's employment in July of
 8 2003 in large measure because you and he did not get
 9 along; is that right?
 10 A. Right. Um-hum. Yes. Sorry.
 11 Q. And when you left his employment, you sat down
 12 with Mrs. Chase and the office manager, Stephen Green,
 13 and told them that you didn't get along with
 14 Dr. Chase, correct?
 15 A. Yes.
 16 Q. So when you left, Stephen Green knew that you
 17 were leaving in large part because you didn't like
 18 Dr. Chase?
 19 A. Yes.
 20 Q. How long after leaving Dr. Chase's office, his
 21 employment, were you -- did you come in contact with
 22 the Medical Practice Board?
 23 A. I don't remember the exact date. I think it was
 24 a Wednesday.
 25 Q. Was it a few days after or a few weeks after?

3 (Pages 9 to 12)

Page 13

1 A. I think it was a week after.
 2 Q. About one week afterwards?
 3 A. Yes. I was on my way to Maine.
 4 Q. How did the Board make contact with you?
 5 A. Phil Ciotti --
 6 Q. Did -- did --
 7 A. -- called me on the phone at 8:30 in the morning.
 8 Q. Did it come as a surprise to hear from them?
 9 A. Yeah.
 10 Q. Had you had any reason to believe that you would
 11 be contacted by them prior to that?
 12 A. No.
 13 Q. And what did Mr. Ciotti say when he called you
 14 up?
 15 A. That he was -- he was investigating Dr. Chase and
 16 that he asked me for a time to talk to him, so he came
 17 to my house that day.
 18 Q. During the telephone conversation did he tell you
 19 exactly what he wanted to talk to you about?
 20 A. No.
 21 Q. Did he tell you what about Dr. Chase they were
 22 investigating at that point?
 23 A. No.
 24 Q. Did he come to your house later that morning?
 25 A. Yes.

Page 14

1 Q. When he came to your house later that morning,
 2 did he tell you why the Board was investigating
 3 Dr. Chase?
 4 A. Yes. Because a patient was suing him.
 5 Q. So Phil Ciotti said that a patient was suing
 6 Dr. Chase?
 7 A. Yes. Or -- excuse me. I mean, I think I'm using
 8 the wrong words. Pursuing charges against Dr. Chase
 9 I believe.
 10 Q. Okay. Pursuing --
 11 A. To the Medical Board.
 12 Q. Okay. Did Phil Ciotti tell you who that patient
 13 was?
 14 A. I saw the chart. She -- he showed me the chart.
 15 Q. Who was it? Was it Helena Nordstrom?
 16 A. Yes.
 17 Q. Did Mr. Ciotti tell you the nature of the
 18 complaint that she had lodged with the Medical
 19 Practice Board?
 20 A. I don't remember. I believe so.
 21 Q. Do you remember knowing that she had made
 22 allegations regarding unnecessary cataract surgery?
 23 A. Yes.
 24 Q. Did Mr. Ciotti tell you that the Board was
 25 investigating charges or complaints regarding

Page 15

1 unnecessary cataract surgery?
 2 A. Yes.
 3 Q. Did -- what did he tell you about those
 4 complaints, if anything?
 5 A. No. No. Nothing much. Just that they were
 6 investigating and they were just getting testimonies
 7 of -- of the employees and patients.
 8 Q. Did he tell you that he had talked to other
 9 employees at that point?
 10 A. He told me he had talked to a couple and he was
 11 going to be talking to the rest.
 12 Q. Did he tell you which employees he had already
 13 talked to?
 14 A. No.
 15 Q. Did he tell you what some of these other
 16 employees had told him?
 17 A. Yes. Sort of.
 18 Q. What did he tell you?
 19 A. Well, I -- I -- he told me about Dr. DeVita, so
 20 yes, he did tell me that Dr. DeVita had spoke to him
 21 already. And he just said that what I had stated was
 22 pretty much the same as what Dr. DeVita had stated, so
 23 just -- that's what he said.
 24 Q. Did he tell you this -- when you say what you had
 25 stated, you're referring to what you later told him

Page 16

1 during the course of --
 2 A. Yes.
 3 Q. -- the interview?
 4 A. Yes.
 5 Q. Prior to asking you questions, did he tell you
 6 that he had spoken with Dr. DeVita and tell you
 7 generally what Dr. DeVita had said?
 8 A. No. No.
 9 Q. Did he tell you that other staff members had
 10 informed the Board that they thought Dr. Chase was
 11 doing unnecessary cataract surgery?
 12 A. No.
 13 Q. What did he say he wanted from you?
 14 A. Just information.
 15 Q. Did he indicate that you could choose not to
 16 speak with him?
 17 A. No.
 18 Q. To the contrary, did he indicate to you that
 19 you -- that you had no choice but to speak with him?
 20 A. No.
 21 Q. What did he say?
 22 A. He -- I think it was more myself believing that I
 23 had to talk to him. I didn't understand completely.
 24 Q. Why did you believe you had to talk to him?
 25 A. Because he was investigating Dr. Chase, and I

4 (Pages 13 to 16)

Page 17

1 felt that I needed to talk.
 2 Q. Did he tell you that if you didn't talk to him
 3 there, that he would subpoena you?
 4 A. Yes. That he would have to, in return, subpoena
 5 me for a later date.
 6 Q. Were you worried that if you didn't talk with him
 7 voluntarily you might get in some trouble?
 8 A. I believe so.
 9 Q. What were you worried about?
 10 A. Just being part of the investigation. I didn't
 11 want to be a part of it.
 12 Q. Now, during the course of the interview, did
 13 Mr. Ciotti ask you specific questions, or did he just
 14 ask you, What do you know about Dr. Chase and cataract
 15 surgery?
 16 A. Both.
 17 Q. What sort of things did he ask you specifically?
 18 A. Well, he pulled out the chart, and I went over
 19 the chart with him, so that was what he specifically
 20 asked me to do, and he asked me about CST with BATs
 21 and stickie notes, so -- and then I spoke in between.
 22 Q. Did he take notes during the interview?
 23 A. Yes.
 24 Q. Did he take notes in the form of a statement that
 25 you later signed?

Page 18

1 A. Yes.
 2 Q. Did he take notes in addition to that statement?
 3 A. I don't remember.
 4 Q. Did he tell you that the information that you
 5 were giving him would form much of the basis for the
 6 State's efforts to summarily revoke Dr. Chase's
 7 license?
 8 A. No.
 9 Q. I'm going to hand you what we have marked as
 10 Landry Deposition Exhibit 2, which is the State's
 11 motion for summary suspension. Have you seen this
 12 before?
 13 A. Yes.
 14 Q. Did the State, either Mr. Ciotti or anyone else,
 15 ask you to review the portion of this that contained
 16 your allegations before -- before this was filed? In
 17 other words, did they ask -- did the State ask you to
 18 look at this to determine its accuracy before it was
 19 filed?
 20 A. No.
 21 Q. When did you first see this?
 22 A. When -- I don't know the lawyer's name, but
 23 there's a lawyer that was suing Mr. and Mrs. Chase,
 24 and she asked me to go through it and I'd get to
 25 change some things on it, so that was my first time

Page 19

1 seeing this.
 2 Q. Did you see the allegations in here as they were
 3 reported in the newspaper near the time of Dr. Chase's
 4 license suspension?
 5 A. Can you ask that again?
 6 Q. Sure. I'm sorry. Did you see any of the news
 7 coverage regarding Dr. Chase's license suspension?
 8 A. Yes. Every one of them. Except for when I was
 9 in Maine when it first happened.
 10 Q. And did you read the newspaper's accounts of your
 11 testimony as contained in the specification of
 12 charges?
 13 A. Yes.
 14 Q. What was your reaction when you found out that
 15 your testimony had formed the basis for this summary
 16 suspension document?
 17 A. I was upset.
 18 Q. Why were you upset?
 19 A. Because I didn't fully understand that this was
 20 how it was going to happen. I didn't understand that.
 21 Q. Between the time you sat down with Phil Ciotti --
 22 and by the way, did you just meet with him on one
 23 occasion?
 24 A. Yes.
 25 Q. And between the time you met with him on that one

Page 20

1 occasion and the time Dr. Chase's license was
 2 suspended, did you talk with anybody else from the
 3 Medical Practice Board?
 4 A. No.
 5 Q. When you saw the statements that had been
 6 attributed to you by the State in this summary -- in
 7 this summary suspension document, were you concerned
 8 that some of them were not accurate?
 9 A. Yes.
 10 Q. Can you flip to Page 5 of this for me, which is
 11 where your -- the rendition of your testimony starts.
 12 You see it starts with Paragraph 18?
 13 A. Yes.
 14 Q. I'm going to ask you to look first at
 15 Paragraph 20, which says, Miss Landry stated that she
 16 believed respondent, and then it has quotation marks,
 17 "crafted records to force patients into cataract
 18 surgery."
 19 Did you tell Phil Ciotti that Dr. Chase
 20 "crafted records to force patients into cataract
 21 surgery"?
 22 A. No.
 23 Q. At the time you talked with Phil Ciotti, did you
 24 know whether or not Dr. Chase had crafted records to
 25 force patients into cataract surgery? Again, I'm

5 (Pages 17 to 20)

Page 21

1 asking you what you knew, not what you were guessing.
 2 A. Right. But I just don't completely understand.
 3 I didn't say this.
 4 Q. I understand. Okay. Is it fair to say that when
 5 you talked with Phil Ciotti, you didn't know one way
 6 or the other whether or not Dr. Chase had crafted
 7 records to force patients into cataract surgery?
 8 A. Right. Yes.
 9 Q. And -- okay. I'm going to ask you to look at
 10 Paragraph 21. It says, According to Miss Landry,
 11 recording of test results was different for a patient
 12 that was above the age of 35 and had no prior cataract
 13 surgery.
 14 Did you tell Phil Ciotti that?
 15 A. I misrepresented it. It was supposed to be 45.
 16 Q. Okay. So you did say that recording of test
 17 results was different for patients over the age of 35?
 18 A. I believe so.
 19 Q. Okay. But you believe that you were incorrect in
 20 telling him that?
 21 A. Yes. I was nervous.
 22 Q. Later in that paragraph it says, For patients in
 23 the target group, technicians were instructed not to
 24 record any test results in the chart but instead to
 25 write testing results on Post-it paper.

Page 23

1 A. Right.
 2 Q. And by that point in the examination the
 3 patient's eyes were dilated for the purpose of
 4 allowing Dr. Chase to look into them with the slit
 5 lamp?
 6 A. Yes.
 7 Q. But Dr. Chase didn't, to your knowledge, dilate
 8 their eyes for the purpose of reperforming a CST with
 9 BAT test?
 10 A. No.
 11 Q. Instead, by the time it came -- by the time he
 12 was examining them, their eyes were already dilated?
 13 A. Yes.
 14 Q. Okay. I'm going to ask you to look at Page --
 15 Paragraph 25, which is on Page 6 of Exhibit 6.
 16 THE REPORTER: Exhibit 6?
 17 MR. MILLER: I'm sorry. Page 6 of
 18 Exhibit 2.
 19 Q. It says, After test results -- after tests were
 20 performed, respondent would conduct a slit lamp where
 21 respondent would, with patients of the target group,
 22 begin what Miss Landry characterized as a "spiel"
 23 concerning the presence of cataracts.
 24 Did you tell Phil Ciotti that Dr. Chase
 25 made a spiel to cataract patients?

Page 22

1 Did you tell Phil Ciotti that?
 2 A. Yes.
 3 Q. You told him that technicians were instructed not
 4 to record any test results on the chart but instead to
 5 write test results on Post-it paper?
 6 A. Snellen and CST with BAT results.
 7 Q. Okay. But you didn't tell --
 8 A. Snellen and refractions went on Post-its.
 9 Q. So just so I understand, Snellen and refractions
 10 went on Post-it notes; is that right?
 11 A. Yes.
 12 Q. And that's what you told Phil Ciotti?
 13 A. I don't remember.
 14 Q. Okay. CST with BAT results did not go on Post-it
 15 notes?
 16 A. No. No.
 17 Q. And you did not tell Phil Ciotti that CST with
 18 BAT results went on Post-it notes?
 19 A. No. No.
 20 Q. Now, it's true that from time to time Dr. Chase
 21 had his scribes or technicians reperform CST with BAT
 22 results --
 23 A. Right.
 24 Q. -- during his examination of the patient; is that
 25 right?

Page 24

1 A. No. Not my wording.
 2 Q. Is that a word that you use?
 3 A. No.
 4 Q. What does spiel mean to you?
 5 A. It just means that he made something up. I mean,
 6 I just don't use the word.
 7 Q. And you didn't use it with Phil Ciotti?
 8 A. No. It's just a role, a thing that you would go
 9 through.
 10 Q. And you didn't tell -- did you tell Phil Ciotti
 11 that Dr. Chase made this spiel or any other
 12 presentation with every member of the target group,
 13 whether or not they had cataract -- whether or not
 14 they were diagnosed with cataracts?
 15 A. Would you repeat that?
 16 Q. Sure. What this says is that respondent would,
 17 with patients of the target group -- which is
 18 previously defined as people over 35 with no prior
 19 cataract surgery. Respondent would, with patients of
 20 the target group, begin what Ms. Landry characterized
 21 as -- characterizes as a spiel concerning the presence
 22 of cataracts.
 23 Now, put aside whether or not "spiel" is
 24 correct for a moment.
 25 A. Um-hum.

6 (Pages 21 to 24)

Page 25

1 Q. Did you tell Phil Ciotti that Dr. Chase made the
2 same presentation to everybody over the age of 35 who
3 hadn't had prior cataract surgery?
4 A. I believe so.
5 Q. And you --
6 A. That -- that he said needed cataract surgery.
7 Q. Okay. But only if he had diagnosed them as
8 having cataracts, correct?
9 A. Yes.
10 Q. Paragraph 26 reads, Respondent had his
11 examinations transcribed, and a "script" on an index
12 card was taped to the machine in the examination for
13 the benefit of the "scribe."
14 Did you tell Phil Ciotti that there was a
15 script taped on an index card in the examination room?
16 A. No. I told him that there was information so
17 that people like myself that did not scribe very much
18 knew the points to put down in the chart when he was
19 talking about cataract surgery to the patients.
20 Q. Is it accurate to portray that card as a script,
21 in your opinion?
22 A. No.
23 Q. Is it accurate to say that it was a tool used by
24 the scribes like you in order to make sure that they
25 properly charted everything that Dr. Chase normally

Page 27

1 Q. Is this something that you learned from the other
2 techs and scribes in the office?
3 A. Are you asking this form?
4 Q. Yes. This format generally.
5 A. Yes. It was just recopied because the other one
6 was looking frayed.
7 Q. So you recopied this so you could read it more
8 easily in the exam room?
9 A. Yes.
10 Q. Was it based on the -- the card that Elaine
11 Lampron had done up?
12 A. I don't know who did it before me.
13 Q. Okay. So you don't know who wrote the card that
14 you copied on to this one?
15 A. No.
16 Q. Did the other scribes use similar cards?
17 A. It was taped on to the slit lamp.
18 Q. So every scribe using that room would -- would
19 have access to this card; is that right?
20 A. Yes. Yes.
21 Q. Did other techs use written prompts like this in
22 connection with other parts of their jobs; for
23 instance, how to perform tests and things like that?
24 A. No.
25 Q. Was this the only card like this that you came

Page 26

1 conveyed to a cataract patient during the course of
2 the examination?
3 A. Yes.
4 Q. And to make sure that neither he nor you forgot
5 to tell them some important piece of information
6 regarding their diagnosis or the risks or benefits of
7 surgery?
8 A. It was strictly for myself. He did not use it.
9 Or somebody else.
10 Q. So he didn't refer to that card, correct?
11 A. No.
12 Q. And -- okay. I'm going to show you what we've
13 marked as Landry Deposition Exhibit 3. Is Landry
14 Deposition Exhibit 3 the note card that you used as a
15 charting tool in the exam room?
16 A. Yes.
17 Q. And is this in your handwriting?
18 A. Yes.
19 Q. When did you write it?
20 A. I don't know.
21 Q. Early on in your tenure at Dr. Chase's office?
22 A. Yes. I'm sure.
23 Q. Okay. This is not something that Dr. Chase asked
24 you to do, is it?
25 A. No.

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1 across during your time in Dr. Chase's office?
2 A. There might have been a chart on the wall near
3 the auto refractor -- automatic lens. I can't think
4 of the name. I'm sorry.
5 Q. There's a machine called an auto refractor,
6 correct?
7 A. No. Not -- yes. Absolutely.
8 Q. And that's not the machine you're --
9 A. No.
10 Q. -- you're referring to now?
11 A. Right.
12 Q. But there may have been another card like this
13 near one of the other diagnostic machines in the
14 office?
15 A. Explaining how to do -- but I -- I just can't
16 remember. I'm sorry.
17 Q. Did you think there was anything wrong or unusual
18 or unethical about using this card to help you chart
19 during Dr. Chase's exams?
20 A. No.
21 MR. WINN: Object to the form.
22 Go ahead.
23 Q. You can answer if you understand the question.
24 A. No.
25 Q. What did you think when you saw this described as

7 (Pages 25 to 28)

Page 29

1 a script and featured prominently in the State's
 2 charges against Dr. Chase?
 3 MR. WINN: Object to the form.
 4 A. I don't know how to answer that one.
 5 Q. Did you think that the charges as you read them
 6 misrepresented the nature of this card?
 7 A. Yes.
 8 Q. You've identified several places where you don't
 9 agree with the State's characterization of the
 10 information you gave Phil Ciotti, correct?
 11 A. Correct.
 12 Q. After you saw how the information you gave him
 13 had been conveyed by the State in the -- in the
 14 charging documents in this case, did you call Phil
 15 Ciotti or anybody else at the State to tell them that
 16 they had misrepresented what you said?
 17 A. Yes.
 18 Q. Who did you call?
 19 A. Phil Ciotti.
 20 Q. When did you do that?
 21 A. When I was in Maine.
 22 Q. Okay. And you were in Maine at the time
 23 Dr. Chase's license was suspended, correct?
 24 A. Yes.
 25 Q. Do you remember the dates you were in Maine

Page 31

1 Q. When was that?
 2 A. Maybe a week later.
 3 Q. Where did that take place?
 4 A. At my house.
 5 Q. Did he come to your house again?
 6 A. No. Just a phone call, making sure that I was
 7 okay.
 8 Q. Did he call you?
 9 A. Yes.
 10 Q. By that point had you been able to see the -- did
 11 you have more accurate information about what had been
 12 included in the State's charging documents?
 13 A. I read the newspapers.
 14 Q. And did you tell him with any more specificity
 15 which portions of the testimony attributed to you were
 16 inaccurate?
 17 A. No. I don't believe so.
 18 Q. Did he ask you -- did he follow up on your
 19 earlier conversation and ask you which portions of the
 20 testimony attributed to you were inaccurate?
 21 A. No.
 22 Q. What else do you remember about the telephone
 23 conversation with him that time?
 24 A. Nothing much. Just that -- he was just making
 25 sure that if I needed anything, that I could just call

Page 30

1 specifically?
 2 A. The last week of July, first week of August.
 3 Q. So you called Phil Ciotti from Maine?
 4 A. Yes.
 5 Q. What did you say to him?
 6 A. I said that I believe that the information was
 7 inaccurate. Because I'd only heard it on the news,
 8 though, from my mother-in-law's, calling her at
 9 6 o'clock at night. Said that I was very upset that
 10 it didn't seem like anybody else had been spoken to
 11 with what I had heard, and he said that -- that
 12 everything was going to be okay and we would talk when
 13 I got back.
 14 Q. Did you tell him during that conversation which
 15 portions of what you had heard were inaccurate?
 16 A. No. I didn't know much.
 17 Q. You just told him that part of -- much of what
 18 you heard had -- was inaccurate?
 19 A. I didn't know much.
 20 Q. But you didn't know what portions of it were
 21 inaccurate?
 22 A. Right.
 23 Q. When you got back, did you talk with Phil Ciotti
 24 again?
 25 A. Yes. I believe so.

Page 32

1 him.
 2 Q. Did he ask you anything more about the substance
 3 of the allegations?
 4 A. No.
 5 Q. And did you tell him anything more about the
 6 substance of the allegations?
 7 A. No.
 8 Q. How long was the conversation?
 9 A. Ten minutes?
 10 Q. Did you reiterate to him that you were upset that
 11 you were featured so prominently in --
 12 A. Yes.
 13 Q. And what was his reaction?
 14 A. That it -- that's just the way that it was -- had
 15 to be done. I don't remember his exact words.
 16 Q. I'm going to show you what we've marked as Landry
 17 Deposition Exhibit 4. Have you seen this before?
 18 A. Yes.
 19 Q. Is this the statement that you signed for Phil
 20 Ciotti during that first meeting you had with him at
 21 your house?
 22 A. Yes.
 23 Q. Have you signed any other statement for the
 24 Medical Practice Board since this?
 25 A. No.

8 (Pages 29 to 32)

Page 33

- 1 Q. Is this your handwriting?
- 2 A. No.
- 3 Q. Whose handwriting is this?
- 4 A. Phil Ciotti's.
- 5 Q. Did he write this while he was talking with you?
- 6 A. Yes.
- 7 Q. Are these your initials at the bottom of the
- 8 first, second, and third page and your signature at
- 9 the bottom of the fourth?
- 10 A. Yes.
- 11 Q. Did Mr. Ciotti ask you to sign it?
- 12 A. Yes.
- 13 Q. Did he allow you to review it before signing it?
- 14 A. Yes.
- 15 Q. Did you read it?
- 16 A. Yes.
- 17 Q. Did he ask you if this was accurate?
- 18 A. I don't remember.
- 19 Q. Did you tell him when you read it that certain
- 20 portions of this did not accurately represent what you
- 21 had said to him?
- 22 A. Yes.
- 23 Q. I'm sorry?
- 24 A. Yes.
- 25 Q. And what was his response to that?

Page 34

- 1 A. That this was his notes and that it was okay,
- 2 that he was taking down the notes.
- 3 Q. Just so I understand, he took these notes while
- 4 you were talking, correct?
- 5 A. Yes.
- 6 Q. At the end of the interview he asked you to read
- 7 and sign this, correct?
- 8 A. Yes.
- 9 Q. And upon reading it, you told him that portions
- 10 of it did not accurately represent what you told him,
- 11 correct?
- 12 A. Correct.
- 13 Q. And upon telling him that, he told you, Don't
- 14 worry about it; sign it anyway; this is just for my
- 15 notes?
- 16 A. Not in that --
- 17 MR. WINN: Object to the form.
- 18 Q. What did he say as best you can recall?
- 19 A. That -- that he was taking down notes as he wrote
- 20 and that it was okay, that, you know, I didn't have to
- 21 worry about it being accurate -- exactly to my
- 22 wording, I believe.
- 23 Q. Did he tell you that this was a sworn statement
- 24 that could be used as evidence later?
- 25 A. I don't believe so.

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- 1 Q. Did you understand given what he told you that
- 2 this was a sworn statement that could be used as
- 3 evidence later?
- 4 A. No.
- 5 Q. Did you instead understand that this was just for
- 6 his note-keeping purposes?
- 7 A. That's what I believe.
- 8 Q. And you believe that based on what he told you?
- 9 A. I believe so.
- 10 Q. When you told him that this wasn't accurate in
- 11 certain respects, did you tell him the respects in
- 12 which it was not accurate?
- 13 A. Well, I picked out some words, like "crafted" and
- 14 "scripted," and that's when he said that they were
- 15 just his notes.
- 16 Q. So he didn't ask you to tell him any other places
- 17 where you thought it might be inaccurate?
- 18 A. No.
- 19 Q. I'm going to ask you to turn to Page 2 of this,
- 20 please. The first full paragraph on that page, which
- 21 begins, "At the point," do you see that?
- 22 A. Yup.
- 23 Q. The next full sentence says, He goes over the
- 24 chart. If the CST with BAT isn't bad, he'll ask the
- 25 tech to do another CST with BAT, and the eyes are

Page 36

- 1 already now dilated.
- 2 Did I read that right?
- 3 A. Yup. Yes.
- 4 Q. How often did you sit in the exam room with
- 5 Dr. Chase?
- 6 A. Not often.
- 7 Q. How many times per week were you sitting in the
- 8 exam room with him?
- 9 A. It varied.
- 10 Q. From what to what?
- 11 A. Well, depending on what other people were doing,
- 12 but probably, I don't know, five or six times a week,
- 13 maybe.
- 14 Q. And in an average week, about how many patients
- 15 did he examine, do you think, on average?
- 16 A. I don't have any idea.
- 17 Q. Hundreds?
- 18 A. Maybe, yeah.
- 19 Q. During the examination Dr. Chase would examine
- 20 the patient's eyes through the slit lamp, correct?
- 21 A. Um-hum. Yes.
- 22 Q. And if what he saw when he looked through the
- 23 slit lamp didn't jive with the results of the prior
- 24 CST with BAT test, he would sometimes ask the tech or
- 25 the scribe to reperform the CST with BAT test; is that

9 (Pages 33 to 36)

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1 right?
 2 A. Yes.
 3 MR. WINN: Object to the form.
 4 Q. Is it correct, then, to say, as is written down
 5 here by Mr. Ciotti, that if the CST with BAT isn't
 6 bad, he'll ask the tech to do another CST with BAT?
 7 A. Yes.
 8 Q. What do you mean by that?
 9 A. What I mean is that if you're in the room with
 10 him as the scribe at that time, if he looks at the
 11 chart, there's times where he would go and look at the
 12 chart, look at the Snellen, look at the CST with BAT
 13 results, and turn around and say to the scribe, Do
 14 another CST with BAT.
 15 Q. This is before examining the patient's eyes or
 16 after?
 17 A. Sometimes after; sometimes before.
 18 Q. Okay. Are --
 19 A. Sometimes he would just go in the room and look
 20 at the chart and say we need another CST with BAT.
 21 Sometimes he would be leaning into the slit lamp and
 22 change his mind and say he needed to do a CST with
 23 BAT, another one.
 24 Q. So in this paragraph we're reading, you talk
 25 about when CST with BAT was performed and then it was

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1 Q. So based on your personal knowledge, you don't
 2 know whether or not he had the CST with BAT results
 3 reperformed before or after he examined the patient's
 4 eyes?
 5 A. I can't remember.
 6 Q. The next paragraph says, So now he just starts
 7 leaning into a slit lamp exam and he starts saying,
 8 "Dense central nuclear cataract OU" to the scribe.
 9 This is before he can even see anything, exclamation
 10 point.
 11 Did you tell Phil Ciotti that Dr. Chase
 12 diagnosed people with cataracts before he looked into
 13 the slit lamp?
 14 A. No.
 15 Q. Is this one of the things that when you read it
 16 it jumped out at you as being inaccurate?
 17 A. Yes.
 18 Q. Did you tell Phil Ciotti that?
 19 A. Yeah -- I don't know.
 20 Q. You don't know if this is among the things that
 21 you pointed out in particular; is that right?
 22 A. No. Because I didn't read this -- well, the -- I
 23 don't remember the day, but I didn't read this -- this
 24 is the second or third time that I've actually read
 25 this, so -- so I just can't remember.

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1 reperformed, and then at the end of the paragraph it
 2 says, He takes these results and records it under the
 3 visual acuity.
 4 Now, when you say "these results," do you
 5 mean the CST with BAT results or the results of the
 6 second CST with BAT or the result of the first CST
 7 with BAT, or do you know?
 8 A. The results of the second CST with BAT.
 9 Q. Okay. Do you know that the results of the second
 10 CST with BAT were the ones recorded in the chart
 11 rather than the first CST with BAT test?
 12 A. Yes.
 13 Q. Now, am I correct that you actually witnessed him
 14 reperform -- or witnessed him order the CST with BAT
 15 test reperformed on just one or two occasions?
 16 A. Yes.
 17 Q. So everything you've said in this paragraph is
 18 based on those one or two occasions when you were in
 19 the exam room at the time he ordered a second CST with
 20 BAT?
 21 A. Yes.
 22 Q. On those one or two occasions did he ask that the
 23 test be reperformed before or after he looked into
 24 their eyes through the slit lamp?
 25 A. I don't know.

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1 Q. Did you ever see Dr. Chase diagnose a patient
 2 with cataracts before examining their eyes with the
 3 slit lamp?
 4 A. No.
 5 Q. Did you say this emphatically such that it would
 6 warrant anything about this -- emphatically such that
 7 it would warrant quoting you and putting an
 8 exclamation point at the end?
 9 A. I believe what I said is that I feel that he
 10 starts leaning into the slit lamp and will say dense
 11 central nuclear cataracts OU before he could truly see
 12 anything. It was my perception, my belief. It wasn't
 13 that I factually knew that.
 14 Q. So you believed that although he was already
 15 looking into the slit lamp --
 16 A. Leaning into it, yes.
 17 Q. -- he -- let me -- I want to make sure --
 18 A. I'm sorry.
 19 Q. -- I get this accurate.
 20 A. I'm sorry.
 21 Q. You believe that although he was already looking
 22 through the slit lamp, he was not yet in a position to
 23 honestly diagnose these patients with cataracts?
 24 A. Yes.
 25 Q. And what is the basis for that belief?

10 (Pages 37 to 40)

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1 A. Because there's so much of a gap between the
 2 lens -- the slit lamp and his -- his eyes. I just
 3 couldn't understand how he could actually see
 4 something. But that's my belief.
 5 Q. Can you flip to Page 3 of this. This first
 6 paragraph talks -- begins by talking about how you
 7 believe there was a push to fill the surgical
 8 schedule --
 9 A. Yes.
 10 Q. -- in the OR. And then it ends by saying, Prior
 11 to that, prior to the time the surgical schedule was
 12 filled, it seems every patient, and every is in all
 13 caps, in the target group gets told they have
 14 cataracts.
 15 Did you tell Phil Ciotti that you thought
 16 every patient over the age of 35 or 45 was told they
 17 had cataracts until the surgical schedule was filled?
 18 A. I believe so.
 19 Q. Now, the diagnosis for cataracts only -- takes
 20 place in the exam room, correct?
 21 A. Yes.
 22 Q. And you said earlier that you were only in the
 23 exam room with Dr. Chase on average five times a week;
 24 is that right?
 25 A. Yes.

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1 Q. And so you can't say that every patient in the
 2 target group gets told they have cataracts until the
 3 surgical schedule is filled from personal knowledge,
 4 can you?
 5 A. Well, you would see patients coming out of the
 6 rooms being told they had cataracts and being walked
 7 over to the surgery scheduling room.
 8 Q. Did you work with or see every patient that came
 9 through the office?
 10 A. No.
 11 Q. Two paragraphs down begins with the sentence, I
 12 know he operates unethically.
 13 Did you tell Phil Ciotti, "I know
 14 Dr. Chase operates unethically"?
 15 A. I believe so. I don't know. I think so.
 16 Q. Did you tell Phil Ciotti that you knew he did or
 17 that it was your belief that he did?
 18 A. I don't know. I -- I believe I said that I know,
 19 because I was feeling it, but --
 20 Q. But do you know?
 21 A. No.
 22 Q. The paragraph goes on to talk about how you and
 23 the other techs would vent to Dr. DeVita and try to
 24 steer patients to him and that you went to talk to
 25 Stephen Green to get this to stop -- that Dr. DeVita

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1 went to Stephen Green --
 2 A. Right. Right. Yes.
 3 Q. -- to get this to stop. Did you -- so you
 4 brought your concerns regarding Dr. Chase's practices
 5 with cataract patients to Dr. DeVita's attention?
 6 A. Yes.
 7 Q. And you believe that Dr. DeVita talked to Stephen
 8 Green about that?
 9 A. Absolutely.
 10 Q. Did you talk directly to Stephen Green about
 11 that?
 12 A. No.
 13 Q. It also says, We brought the concerns to his wife
 14 because she is the CEO. Do you see that?
 15 A. Yes.
 16 Q. Did you tell that to Phil Ciotti?
 17 A. No.
 18 Q. Did you bring your concerns regarding Dr. Chase's
 19 practices with cataract patients to Brianne Chase's
 20 attention?
 21 A. No.
 22 Q. You did go to her with your concerns about how
 23 Dr. Chase treated you?
 24 A. Absolutely.
 25 Q. But you never went to her with your concerns

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1 about Dr. Chase's medical practices?
 2 A. No.
 3 Q. And you didn't tell Phil Ciotti that you did
 4 that?
 5 A. No.
 6 Q. And when you go on to say that she said he's set
 7 in his ways and she's made him come to apologize,
 8 you're talking about how he treated you and the other
 9 staff there?
 10 A. Yes.
 11 Q. You're not talking about his practices with
 12 cataract patients?
 13 A. No.
 14 Q. Was this one of the inaccuracies you brought to
 15 Phil Ciotti's attention during any of your
 16 conversations?
 17 A. I don't know.
 18 Q. Okay. When you told -- and Phil Ciotti didn't
 19 ask you -- when you told him that portions of this
 20 were inaccurate, he didn't ask you whether this
 21 portion was accurate?
 22 A. No.
 23 Q. Turn to the next page. You're ahead of me.
 24 A. I watched you.
 25 Q. About two-thirds of the way down the page there's

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1 a paragraph that says, On so and so's chart. Is that
 2 Helena Nordstrom's chart?
 3 A. Yes.
 4 Q. On Helena Nordstrom's chart, I saw where he
 5 fudged the Snellen and CST with BAT results.
 6 A. Okay.
 7 Q. When you said that, what did you mean when you
 8 say he fudged them? First, let me back up.
 9 Did you tell Phil Ciotti that you thought
 10 Dr. Chase had "fudged" the Snellen and CST with BAT
 11 results on Helena Nordstrom's chart?
 12 A. Yes.
 13 Q. Okay. And when you said that, did you mean that
 14 he had placed the CST with BAT results in the portion
 15 of the chart --
 16 A. Yes.
 17 Q. -- that has a V on it for visual acuity?
 18 A. Yes.
 19 Q. Did you mean anything other than that when you
 20 said that he fudged the Snellen and CST with BAT
 21 results?
 22 A. No.
 23 Q. You didn't work on -- you didn't treat Helena
 24 Nordstrom, did you?
 25 A. No.

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1 Q. And you had no -- you took no part in providing
 2 her diagnosis or care during her visit, correct?
 3 A. No.
 4 Q. So you were not --
 5 A. Oh, sorry. Yes. Correct.
 6 Q. Yes, correct, you did not take part in it?
 7 A. Right.
 8 Q. And so you were not in a position to say whether
 9 the tests were performed properly, correct?
 10 A. Correct.
 11 Q. You weren't in a position to say whether the
 12 tests were performed before or after dilation,
 13 correct?
 14 A. Correct.
 15 Q. And you weren't in a position to say whether or
 16 not they were transcribed accurately from either a
 17 Post-it or a CST with BAT sheet onto the chart itself?
 18 A. Correct.
 19 Q. All you were telling Phil Ciotti was that as far
 20 as you could tell, the number written in the first box
 21 in the chart was not Snellen but was instead CST with
 22 BAT?
 23 A. Correct.
 24 Q. It goes on to say, Dr. Chase wrote that she
 25 wanted cataracts removed when she did not.

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1 Did you tell Phil Ciotti that?
 2 A. That is what Dr. Chase wrote down even when not
 3 talking to the patient, so he would write that down
 4 ahead of time. When he said that the patient has
 5 cataracts, he'll write down, Patient wants cataract
 6 surgery, can't see to drive, or whatever.
 7 Q. Let me back up just so I understand what you knew
 8 and what you told Mr. Ciotti and whether that's
 9 accurately reflected here.
 10 You were not in the room when Dr. Chase
 11 diagnosed Ms. Nordstrom as having cataracts, correct?
 12 A. Correct.
 13 Q. And you weren't in -- you didn't play any part in
 14 her care, and so you did not witness any interactions
 15 between her and Dr. Chase; is that right?
 16 A. Correct.
 17 Q. And what you told -- and again, correct me if I'm
 18 wrong here. I'm just trying to understand. And you
 19 told Mr. Ciotti that Dr. Chase would often -- would
 20 sometimes write in the chart that the patient wanted
 21 cataracts removed even when the patient hadn't
 22 actually said that; is that right?
 23 A. Correct.
 24 Q. But you didn't tell Phil Ciotti that Dr. Chase
 25 told Helena Nordstrom that she wanted her cataracts

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1 removed when she did not, because you couldn't have
 2 known that, right?
 3 A. Correct.
 4 Q. Did you point this out as one of the inaccuracies
 5 with --
 6 A. Yes.
 7 Q. You did. You pointed this specifically out to
 8 Phil Ciotti?
 9 A. I'm sorry. No, I did not. I thought you meant
 10 in the chart when looking over her chart.
 11 Q. I see. You pointed out the location of the CST
 12 with BAT results to Phil Ciotti specifically?
 13 A. Yes.
 14 Q. Okay. And even though you told Phil Ciotti that
 15 portions of this statement were inaccurate, you didn't
 16 have an opportunity to tell him about this statement
 17 in particular?
 18 A. I don't know if I did. I don't believe so.
 19 Q. But it's not accurate to say that you told him,
 20 Dr. Chase wrote that Helena Nordstrom wanted cataracts
 21 removed when she did not?
 22 A. I can't honestly answer that.
 23 Q. But you couldn't have known that, correct?
 24 A. Correct.
 25 Q. And you wouldn't have told Phil Ciotti something

12 (Pages 45 to 48)

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1 you didn't know, presumably.
 2 A. Correct.
 3 Q. The last thing I want to cover on this is the
 4 last paragraph, which says, Another concern that I've
 5 had is I've seen on at least two occasions he removed
 6 lesions or cysts on eyelids, and then you go on to say
 7 that he didn't send these for -- to pathology, and you
 8 thought that was inappropriate.
 9 A. Correct.
 10 Q. How often were you -- did you work in the OR?
 11 A. That was one of my main things that I did in the
 12 beginning, so I don't know. I -- maybe you have
 13 something.
 14 Q. I truly am asking.
 15 A. I don't know. I did every surgery day for, I
 16 don't know, two or three months.
 17 Q. And then --
 18 A. Maybe more.
 19 Q. -- at some point you phased out of that, correct?
 20 A. Yes.
 21 Q. And is that because you and Dr. Chase were not
 22 working well together in the OR?
 23 A. Correct. Yes.
 24 Q. And I take it that he wasn't happy with your
 25 performance in there, and you weren't happy with being

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1 Q. You can set that aside if you like.
 2 I'm going to show you what we've marked as
 3 Landry Deposition Exhibit No. 5. Do you recognize
 4 this.
 5 A. Um-hum.
 6 Q. What is it?
 7 A. It's our signatures.
 8 Q. What was the purpose of this sheet?
 9 A. So Dr. Chase could tell who was writing things
 10 down.
 11 Q. And you understood that it was important that
 12 Dr. Chase know who wrote certain things in the chart,
 13 right?
 14 A. Yes.
 15 Q. And that's why having a consistent set of
 16 initials was important?
 17 A. Yes.
 18 Q. Now, I notice next to your name we've got a
 19 couple of sets of initials, right?
 20 A. Um-hum.
 21 Q. Can you explain to me why that is?
 22 A. Yes. Because Sandra Miller and my initials were
 23 getting confused by Dr. Chase, so I changed mine so
 24 that he could completely see that mine was AML.
 25 Q. Okay. Why is the -- which one of these --

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1 in there; is that right?
 2 A. He did not say that.
 3 Q. Okay.
 4 A. But I felt that I did not like being in there
 5 with him.
 6 Q. How many occasions when you were in there did you
 7 see him remove cysts from eyelids?
 8 A. Not that often.
 9 Q. Okay. Can you give me a ballpark?
 10 A. No.
 11 Q. Were there times other than these two referred to
 12 where he removed cysts or lesions that you recall?
 13 A. Yes. I guess I can say maybe five or six. Maybe
 14 four or five. I don't know.
 15 Q. And did he send those to pathology on occasion?
 16 A. On occasion, yes.
 17 Q. And then sometimes he determined that it wasn't
 18 necessary; is that right?
 19 A. Correct.
 20 Q. And all you're saying here is that you disagreed
 21 with him on those one or two occasions?
 22 A. Yes.
 23 Q. On those one or two occasions did you examine the
 24 cysts or the lesions?
 25 A. I don't -- no.

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1 there's three of these from -- moving from left to
 2 write, AML, AML, and AL, right?
 3 A. Yup.
 4 Q. Which was the first one?
 5 A. The AL.
 6 Q. Okay. And you changed that to AML so that you
 7 wouldn't be confused with another -- with a co-worker,
 8 correct?
 9 A. With Sandra Miller's, but it still got confused.
 10 Q. And so the second -- the middle set of initials
 11 was the second set that you used?
 12 A. Yes.
 13 Q. And why was that still confusing?
 14 A. Because if you look down to Sandra's, it still
 15 looked like an A and an M and an L.
 16 Q. So then you finally changed it to the leftmost
 17 AML?
 18 A. That was most clearly wrote for him.
 19 Q. Okay. Did this all happen during the -- you
 20 know, the very first part of your employment?
 21 A. Throughout the employment.
 22 Q. So this is something that was a long-term
 23 process?
 24 A. Yes.
 25 Q. But did you nonetheless use whichever set of

13 (Pages 49 to 52)

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1 initials you were using at the time to initial all the
 2 charts that you worked on? Did you consistently
 3 initial your charts?
 4 A. Yes.
 5 Q. I'm going to show you what we've marked as Landry
 6 Deposition Exhibit 6. I've crossed out the name at
 7 the top, but I'll represent to you that this is the
 8 chart of Helena Nordstrom. Do you recognize it as the
 9 chart that Mr. Ciotti showed you?
 10 A. Yes.
 11 Q. At the bottom of the first page, on the bottom
 12 left corner, is an initial EL, I believe. Is that
 13 Elaine Lampron?
 14 A. Yes.
 15 Q. Does that mean that she took the information on
 16 the front of this chart?
 17 A. Yes.
 18 Q. And on the next page you'll see most of the way
 19 down the right-hand column there's an area for tech
 20 signature, a line for tech signature?
 21 A. Yes.
 22 Q. Does that indicate that Melissa Lozier and Elaine
 23 Lampron worked on this chart?
 24 A. Yes.
 25 Q. And if you flip two more pages back, you'll see a

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1 A. Correct.
 2 Q. And you weren't saying that the Snellen vision
 3 that was recorded on the final page of this as 20/30,
 4 20/50 was an inaccurate Snellen result, correct?
 5 A. Correct.
 6 Q. Because you would have had no way of knowing
 7 that?
 8 A. Correct.
 9 Q. We've talked about two conversations that you had
 10 with Mr. Ciotti -- well, three, really: An initial
 11 telephone call, a meeting at your home the same day,
 12 and then another telephone call the following week or
 13 so -- or another -- yeah, another telephone call the
 14 following week or so; is that right?
 15 A. Yes.
 16 Q. Are there any other conversations that you had
 17 first with Phil Ciotti regarding this case?
 18 A. No.
 19 Q. Did he ever call you back during the pendency of
 20 this case to check the accuracy of any of the facts
 21 they were -- any of the statements they were
 22 attributing to you?
 23 A. No.
 24 Q. Okay. Did you talk with anybody at the Medical
 25 Practice Board or the Attorney General's office other

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1 contrast sensitivity test sheet, which is not
 2 initialed, correct?
 3 A. Correct.
 4 Q. Your initials are nowhere on this chart; is that
 5 right?
 6 A. Correct.
 7 Q. So far as you know, you had no involvement in the
 8 treatment of Helena Nordstrom?
 9 A. Yes. As far as I know, I did not.
 10 Q. And just so I understand -- I should have pulled
 11 this out earlier. We were talking earlier about how
 12 you said the CST and Snellen were fudged. I'm looking
 13 at the first page of this exhibit. It says number 1,
 14 vision, and there's a big V that says OD, OS.
 15 A. Yup.
 16 Q. And next to that it says 20/50, 20/50. Do you
 17 see that?
 18 A. Yes.
 19 Q. When you said the vision was being fudged, what
 20 you meant, if I'm correct, is that the vision recorded
 21 there, 20/50, 20/50, is CST with BAT rather than
 22 Snellen?
 23 A. Yes.
 24 Q. You were not saying that that 20/50, 20/50 was an
 25 inaccurate CST with BAT result?

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1 than Phil Ciotti about -- about this case?
 2 A. Yes.
 3 Q. Who is that?
 4 A. Mr. Winn.
 5 Q. Okay. When did you speak with Mr. Winn?
 6 A. This morning.
 7 Q. Had you spoken with Mr. Winn about this case
 8 before this morning?
 9 A. No.
 10 Q. Did you speak with any other law enforcement
 11 folks other than Phil Ciotti and Joe Winn about
 12 Dr. Chase?
 13 A. No.
 14 Q. Nobody from the federal government or nobody from
 15 the -- the State of Vermont other than those two
 16 folks?
 17 A. No.
 18 Q. Have you been approached by anybody else for
 19 information other than the press?
 20 A. Yes.
 21 Q. Okay. Other than the press and me?
 22 A. Yes.
 23 Q. Who is that?
 24 A. The -- I don't know his name. Grand jury.
 25 Q. Grand jury?

14 (Pages 53 to 56)

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1 A. Yes. But I haven't been there yet.
 2 Q. Have you received a subpoena?
 3 A. Yes.
 4 Q. Did you bring that subpoena with you today?
 5 A. No. It was outdated, and I did not understand
 6 that you wanted that.
 7 Q. Can you get me a copy of that subpoena, please --
 8 A. Yes.
 9 Q. -- after?
 10 A. But I -- that was for last Thursday, and I -- it
 11 was canceled due to weather.
 12 Q. Did they ask you to go to the grand jury down
 13 here on Elmwood Avenue over the post office?
 14 A. Yes.
 15 Q. So that was from the United States Attorney's
 16 Office?
 17 A. Yes.
 18 Q. Did you meet with anybody from the United States
 19 Attorney's Office about your grand jury testimony?
 20 A. No.
 21 Q. Did you have telephone conversations with
 22 somebody from the U.S. Attorney's Office about
 23 scheduling your grand jury testimony?
 24 A. Yes.
 25 Q. Do you know who you talked with?

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1 A. That's who I don't know his name. He was an
 2 investigator for the federal department, I believe,
 3 and he was just asking me if he could bring me over
 4 the subpoena.
 5 Q. But he didn't ask you any substantive questions
 6 about the case?
 7 A. Not at all.
 8 Q. Anybody other than the folks we already mentioned
 9 who have approached you for information?
 10 A. No. Excuse me. Yes. The person that was suing
 11 for their house.
 12 Q. So Ms. Brundage's attorney contacted you?
 13 A. Yes.
 14 Q. And what did Ms. Brundage -- did Ms. Brundage's
 15 attorney contact you personally?
 16 A. Yes.
 17 Q. Mary Kirkpatrick?
 18 A. Yes.
 19 Q. And what did Mary Kirkpatrick ask you?
 20 A. She had me review my affidavit and had me sign it
 21 and said that if I signed it I didn't need to be a
 22 part of the trial.
 23 Q. So she told you if you signed an affidavit for
 24 her, she wouldn't have to call you as a witness at the
 25 trial?

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1 A. Correct.
 2 Q. What else did she tell you or ask you?
 3 A. Just asked me to review what I knew -- what I had
 4 wrote down. She didn't go over anything, didn't -- I
 5 did not -- no. I didn't -- she didn't tell me
 6 anything. Just that -- I told her that I didn't want
 7 to be a part of it.
 8 Q. Did you tell her that -- any aspects of the --
 9 did you tell her that certain aspects of your prior
 10 statement -- signed statement written by Phil Ciotti
 11 were inaccurate?
 12 A. Yes.
 13 Q. Did you tell her which ones were inaccurate?
 14 A. Yes. She allowed me to rewrite my affidavit to
 15 some extent.
 16 Q. Do you remember when that conversation took
 17 place?
 18 A. Before the hearing.
 19 Q. Did she call to tell you what the results of that
 20 hearing were?
 21 A. No.
 22 Q. Do you know what the results of that hearing
 23 were?
 24 A. No.
 25 Q. Was anybody else present for your conversations

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1 with Mary Kirkpatrick?
 2 A. No.
 3 Q. Were they in person or over the phone?
 4 A. They were in person.
 5 Q. At her office?
 6 A. No.
 7 Q. At your home?
 8 A. No.
 9 Q. Where were they?
 10 A. Waiting for you to guess.
 11 They were at my work, but not in the --
 12 they were in kind of the atrium area outside of my
 13 actual workplace.
 14 Q. This is your -- the office that Tom Cavin has out
 15 at Timber Lane?
 16 A. Yes. Yes. I did not expect her. She just
 17 showed up.
 18 Q. She didn't call before she came?
 19 A. I called her and told her that I could not meet
 20 there and that we would need to reschedule, and she
 21 told me she did not get the message, and she just
 22 showed up.
 23 MR. MILLER: I'm going to move on to
 24 another area in a second here. Why don't we take a
 25 quick break.

15 (Pages 57 to 60)

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1 MR. WINN: Okay.
 2 (A short break was taken.)
 3 BY MR. MILLER:
 4 Q. I want to just circle back to one thing that we
 5 talked about --
 6 A. Okay.
 7 Q. -- just to make sure I understand. This is back
 8 to the cysts and lesions --
 9 A. Yes.
 10 Q. -- that were removed. On the one or two
 11 occasions that you recall disagreeing with Dr. Chase's
 12 judgment on whether or not removed cysts or lesions
 13 should be sent to the lab, were those removed in the
 14 OR or in the lane?
 15 A. OR.
 16 Q. Are you familiar with written protocol that the
 17 office has on when tissue samples get sent to the lab?
 18 A. No.
 19 Q. Okay. So you don't know whether or not his
 20 practices in that instance were consistent or
 21 inconsistent with that written protocol?
 22 A. No.
 23 Q. What training -- did you have dermatological
 24 training?
 25 A. Yes.

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1 Q. So --
 2 A. Yes.
 3 Q. When a patient comes in, is the first thing done
 4 relevant to the medical treatment taking a history of
 5 that patient?
 6 A. Yes.
 7 Q. And who does that?
 8 A. Either the technician or the scribe, depending.
 9 If we're really -- the technicians are really busy and
 10 Elaine wasn't, then Elaine would do the front half
 11 with the history.
 12 Q. So Elaine was Dr. Chase's most often-used scribe
 13 is that --
 14 A. Yes.
 15 Q. And so Elaine would take the history if she
 16 wasn't otherwise busy with a patient?
 17 A. Yes.
 18 Q. But if she was busy with a patient, a tech would
 19 take the history?
 20 A. Yes.
 21 Q. And for that -- was Dr. Chase present for that
 22 history?
 23 A. No.
 24 Q. Had Dr. Chase seen the patient by the time that
 25 history had been taken? During that exam, had

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1 Q. What was the nature of that training?
 2 A. A dermatological technician.
 3 Q. For how long?
 4 A. I believe two years.
 5 Q. Where?
 6 A. At UHC.
 7 Q. Did you deal with eyelid cysts and lesions at all
 8 during that time?
 9 A. Yes. Some of the doctors did that, but I believe
 10 they called it Mohs surgery.
 11 Q. Called it what?
 12 A. Mohs. If there was, like, a procedure that was
 13 going to remove basal cells or whatnot. But they
 14 would just take a very small sliver, sent it to
 15 pathology, and then they would perform Mohs surgery.
 16 Q. How do you spell Mohs?
 17 A. I believe it's M O E S.
 18 Q. Okay. I'm going to ask you to pick up Exhibit 6,
 19 which was the Nordstrom -- portion of the Nordstrom
 20 medical file. And I'd like to just -- I'm going to
 21 start with this. We'll look at other forms. I want
 22 to just walk through what happens when a patient comes
 23 into Dr. Chase's office, what gets down, who does it,
 24 how it gets recorded. Okay?
 25 A. Um-hum.

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1 Dr. Chase seen the patient before the history?
 2 A. No. Only if he started the patients. I mean,
 3 there are times when we were really busy that he'd
 4 take patients in the room, but still, somebody else
 5 did the history.
 6 Q. Okay. But that was the exception to the rule,
 7 right?
 8 A. Yes.
 9 Q. Looking at Exhibit 6, we've got this initial
 10 portion that says -- that is called History, right?
 11 A. Yes.
 12 Q. And there's an ER in the top left corner of that
 13 box. Do you see that?
 14 A. Um-hum.
 15 Q. What is that?
 16 A. Eye refraction.
 17 Q. And then under that ER there's a bunch of writing
 18 in the same -- in what looks to be the handwriting of
 19 a single person. Do you see that?
 20 A. Yup.
 21 Q. It says, and correct me if you think I'm wrong,
 22 Here to make sure no eye disease, correct?
 23 A. Yes.
 24 Q. OS blurry for two to three weeks?
 25 A. Yes.

16 (Pages 61 to 64)

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1 Q. Notices -- what does that say?
 2 A. VA darker OS than OD.
 3 Q. So her vision was darker in her left eye than in
 4 her right eye?
 5 A. Right.
 6 Q. Then what's the next line say?
 7 A. Has headaches from eye strain.
 8 Q. And then the next?
 9 A. Has difficulty reading.
 10 Q. Go on.
 11 A. I am trying. Maybe gets nausea? Nauseated?
 12 Q. Looks like "gets nauseous" is what it looks like
 13 to me. Is that what it looks like?
 14 A. Yeah.
 15 Q. And then after that?
 16 A. Eyes get very dry. Wants artificial tears.
 17 Q. And then after that?
 18 A. Unable to see -- unable to see to drive clearly
 19 at night.
 20 Q. And then there's something that looks like it
 21 goes down into the -- well, no, that's in the next
 22 box, it looks like. So all those look to be in the
 23 same person's handwriting, right --
 24 A. Yes.
 25 Q. -- the things we've just read?

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1 section of the chart?
 2 A. Yes.
 3 Q. So you don't simply ask them, Are you having any
 4 problems; you actually ask them specific questions
 5 about whether they're having vision problems in
 6 certain circumstances?
 7 A. Well, it would stem off from their answers.
 8 Q. Okay.
 9 A. If you asked them how -- how they're doing, how
 10 do they feel that they are getting along, and they
 11 answer, and then you continue on from there.
 12 Q. What if you ask them are you having any problems
 13 seeing and they said no? Would you then go on to ask
 14 them, Well, are you having trouble driving at night?
 15 Or would that pretty much be the end of it if they
 16 said no?
 17 A. That would be the end of it for me.
 18 Q. Okay. And that's what I'm talking about. During
 19 the initial history, at least as you took them, the
 20 questioning would go no further than that?
 21 A. Correct.
 22 Q. Where was the -- where is this history taken from
 23 the patient?
 24 A. Either in the back room, in the auto refraction
 25 room, or in the exam room if you didn't have one

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1 A. Yup. Yes.
 2 Q. And in looking at the chart, would you -- would
 3 it be your estimation that all those were written
 4 during that initial history?
 5 A. Yes.
 6 Q. And then over on the right there's some other
 7 stuff in Dr. Chase's handwriting, correct?
 8 A. Yes.
 9 Q. And that wouldn't have been written at the time
 10 of the history because he's not there at that point,
 11 correct?
 12 A. Correct.
 13 Q. Was that usually written during the exam itself?
 14 A. Yes.
 15 Q. Okay. What do you ask a person when you're doing
 16 their -- have you done histories?
 17 A. Yes.
 18 Q. What do you ask them?
 19 A. Well, you ask them if they're having any trouble
 20 seeing at night, bothered by glare; you ask them if
 21 they're having any problems at this time. You have to
 22 make sure that there's no other illnesses going on,
 23 including diabetes, anything like that.
 24 Q. And if the patient had self-reported diabetes in
 25 response to your questions, would it appear in this

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1 available to do an auto refraction at that time.
 2 Q. I'm going to hand you what's been marked as
 3 Landry Deposition Exhibit 7. And I'll ask you to keep
 4 6 out, because I think we'll come back to it.
 5 This is a document entitled Eye and Health
 6 History. Have you seen this before?
 7 A. Yes.
 8 Q. Is this something that the patient fills out at
 9 the beginning of the encounter?
 10 A. Yes.
 11 Q. Is this something that's done at the time that
 12 you're taking the history or even before that?
 13 A. It most of the time was before. Sometimes was
 14 during, depending on if the patient was unable.
 15 Q. So if the patient was capable of filling this out
 16 himself or herself, then they did it on their own
 17 before talking with the tech or with the scribe?
 18 A. Yes.
 19 Q. And only if they didn't understand it or had
 20 trouble reading or something would it get filled out
 21 in the scribe's presence?
 22 A. Majority of the time, yes.
 23 Q. Okay. And assuming that this is one that was
 24 filled out at the outset and the patient didn't need
 25 help doing it, would these check marks and circles and

17 (Pages 65 to 68)

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1 writings be in the patient's own handwriting, or is
 2 the tech writing it -- writing on this chart?
 3 A. It should be the person's, the patient.
 4 Q. So in this case, for instance, the second
 5 category of questions is, Are you currently
 6 experiencing any eye symptoms. Then it gives some
 7 choices, correct?
 8 A. Correct.
 9 Q. So this patient circled halos and bothered by
 10 glare as the eye symptoms they're experiencing,
 11 correct?
 12 A. Correct.
 13 Q. And at this point Dr. Chase hasn't seen the
 14 patient, right?
 15 A. No.
 16 Q. And Dr. Chase hasn't -- strike that.
 17 Once the patient signed -- filled out and
 18 signed this, did it go into the chart and move along
 19 with the chart as -- and the patient as the patient
 20 went through other tests and then went to see
 21 Dr. Chase?
 22 A. I don't remember.
 23 Q. That was a terribly phrased question, I guess.
 24 Did the -- can you tell me this: Did Dr. Chase have
 25 this in the chart at the time he examined --

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1 outset at the time you did the history; that was the
 2 goal?
 3 A. Yes.
 4 Q. And you tried to do that in every case where time
 5 and -- and --
 6 A. Yes.
 7 Q. -- practice allowed? But -- and then sometimes
 8 they weren't given at the beginning, but if they
 9 weren't given at the beginning, they got to fill it
 10 out sometime during the exam?
 11 A. Yes.
 12 Q. And -- so the majority of the time were these
 13 filled out at the beginning of the examination
 14 process?
 15 A. Not in the beginning.
 16 Q. It took a while to implement?
 17 A. (Witness nods head).
 18 Q. By the time you left, were they?
 19 A. Yes.
 20 Q. Is this something that the patient filled out on
 21 his or her own, placing the checks in the boxes
 22 themselves?
 23 A. Yes. It was confusing for a lot of patients, so
 24 it had to be -- if we looked through it and they had
 25 things that just clearly didn't match up, we would

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1 A. Yes.
 2 Q. -- the patient? Okay. You can set that aside.
 3 I'm going to show you what was marked as
 4 Landry Deposition Exhibit 8. Do you recognize this?
 5 A. Yes.
 6 Q. It's called a lifestyle questionnaire. Was this
 7 in use during the entire time you worked for
 8 Dr. Chase?
 9 A. Yes. No. The beginning, it was not there.
 10 Q. So this is something that was instituted during
 11 your time there?
 12 A. Yes.
 13 Q. Do you remember when?
 14 A. Within the first couple months Dr. DeVita and I
 15 believe Mrs. Chase worked on it.
 16 Q. So this is something that was put together in
 17 approximately the fall of 2002?
 18 A. Yes.
 19 Q. When was this given to the patient?
 20 A. At the beginning. If they -- if we didn't give
 21 it to them at the beginning, then when they came out,
 22 Dr. Chase would have them do it, or if we finished up
 23 their exam, we had to give it to them, like their
 24 first part of the exam we gave it to them.
 25 Q. So the idea was to give this to them at the

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1 question them.
 2 Q. Okay. But in the first instance they were
 3 filling this out on their own?
 4 A. Yes.
 5 Q. And if it was being filled out at the beginning
 6 of the exam as it was supposed to take place, they
 7 were doing this before they had ever seen Dr. Chase?
 8 A. Correct.
 9 Q. And only if the tech looked at this and saw
 10 answers that just frankly didn't make sense would the
 11 tech then sit down and try to walk through any
 12 inconsistencies with the patient?
 13 A. Correct.
 14 Q. But otherwise this is complete self-reporting on
 15 the patient's part?
 16 A. Yes.
 17 Q. And if this was filled out at the outset of the
 18 exam, is this something that Dr. Chase would have
 19 available to him at the time he examined the patient?
 20 A. Yes.
 21 Q. Were you told to have the patient sign this at
 22 the bottom after they filled it out?
 23 A. Yes.
 24 Q. Is there anything else about taking a history
 25 that we haven't covered?

18 (Pages 69 to 72)

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1 A. I don't believe so.
 2 Q. Okay. What happened next as a patient moved
 3 through the office?
 4 A. We checked their Snellen.
 5 Q. Is that the next thing you did is checked their
 6 Snellen vision?
 7 A. Yes.
 8 Q. Okay. What's the purpose of the Snellen test?
 9 A. The purpose of a Snellen test is giving an idea
 10 of what they could see with their corrected vision at
 11 that time.
 12 Q. And that's a high-contrast test; in other words,
 13 it's dark black letters and a bright white background,
 14 right?
 15 A. Yes.
 16 Q. How is it performed?
 17 A. It was performed with them sitting in a chair,
 18 occluding one eye, and looking down at the Snellen
 19 chart and responding to what letters they can see.
 20 Q. Are they -- at this point are they using the --
 21 you said this is the very first step following the
 22 history, correct? You take a history and then you
 23 take Snellen?
 24 A. Well, I'm sorry. You would have done the auto
 25 refractor beforehand, too.

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1 Q. Let's back up, then.
 2 A. Okay.
 3 Q. Because I'd like to go through these steps in
 4 order.
 5 A. Okay.
 6 Q. After you take the history, you go to the auto
 7 refractor; is that right?
 8 A. In an ideal situation you were in the same room
 9 and you did it at the same time, so ...
 10 Q. What does the auto refractor do?
 11 A. The auto refractor gives you an idea of what
 12 their corrected vision could be with their glasses --
 13 I mean without their glasses. I'm sorry.
 14 Q. And does it also give you at least a rough sense
 15 of what their best prescription should be?
 16 A. Yes.
 17 Q. Does it print that out?
 18 A. Yes.
 19 Q. Is the auto refractor the Nidek machine?
 20 A. Yes. But that's the name of the machine.
 21 Q. The brand of the machine?
 22 A. Yes.
 23 Q. And does it spit out their best refraction as the
 24 machine measures it on to a little tape?
 25 A. Yes. It will -- it will measure it from -- you

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1 know, it will give an answer of, like, nine of nine.
 2 If you get an answer of nine on the side, so that
 3 means you got a good reading.
 4 Q. So it will both give you a refraction and give
 5 you a rating of the reliability of that refraction?
 6 A. Yes.
 7 Q. And why are you doing that at the outset?
 8 A. That is so that when you do a refraction on the
 9 patient you have an idea of where you should be
 10 pointing towards with a refraction.
 11 Q. Because is that tape always accurate as to what
 12 their best prescription is for a patient?
 13 A. It's pretty close, but I don't know the accuracy.
 14 Q. Okay. But it gives you a starting point, at
 15 least?
 16 A. Yes.
 17 Q. That's performed with the patient's eyes in an
 18 undilated state; is that right?
 19 A. Yes.
 20 Q. Okay. And are you aware of any problems or
 21 issues about how the Nidek auto refractive test was
 22 performed and documented in Dr. Chase's office?
 23 A. No.
 24 Q. Do you have any concerns about how that test was
 25 done or recorded?

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1 A. No.
 2 Q. And it's recorded automatically, correct, onto a
 3 tape?
 4 A. Recorded on the tape, yes. But you write it down
 5 here.
 6 Q. Ultimately gets transferred to the chart?
 7 A. Yes. It gets circled. Sometimes, like -- it
 8 looks like this one was under dilation.
 9 Q. So we're looking at Exhibit 6.
 10 A. Yes.
 11 Q. And you're referring to the box -- the
 12 information under the word Nidek in the left-hand
 13 column?
 14 A. It says manifest or cyclo.
 15 Q. Yes.
 16 A. This one was done cyclo. So this person was --
 17 was 43 years old, and we did not do an auto refraction
 18 on them until after they were dilated.
 19 Q. Why is that?
 20 A. I get confused on charting, so I'm not that
 21 accurate with it, but I believe it was because the
 22 patient could accommodate too much for -- accommodate
 23 too much, and I believe she was -- she's a high myope,
 24 and she could accommodate too much for you to get an
 25 accurate reading for glasses.

19 (Pages 73 to 76)

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1 Q. So your understanding is that in a high myope who
2 is young and therefore has a good range of
3 accommodation, you get a more accurate Nidek reading
4 once they're dilated?
5 A. Yes.
6 Q. And that's your estimation, at least, as to why
7 it was performed dilated in her case?
8 A. Yes.
9 Q. Although -- but you didn't take part in her care
10 and so don't know for sure?
11 A. No.
12 Q. Okay. So you've done the auto refractor. What's
13 next?
14 A. You then do the vision. You go into the exam
15 room and you do a vision.
16 Q. And are you using the number that the auto
17 refractor has given you to give them corrective lenses
18 for that vision test?
19 A. Not yet, no.
20 Q. Okay. What do you do first?
21 A. That is when you just take what they're wearing
22 for glasses or if they're not wearing glasses and you
23 have them look down at the Snellen chart and you
24 occlude the one eye and you record -- as in this case,
25 you would record it on a yellow stickie that this was

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1 say that everybody who was going to be getting a CST
2 with BAT had it recorded on the stickie note in the
3 first instance, or is that not necessarily true?
4 A. If they were above 45, yes.
5 Q. Okay. When you perform that first Snellen test,
6 they're in an undilated state, correct?
7 A. Yes.
8 Q. And they're with whatever prescription they came
9 in with?
10 A. Yes.
11 Q. So you record that on a stickie note, and then
12 what -- what happens?
13 A. Then you put them up in front of the refractor.
14 You -- what you would do is you would put in what the
15 Nidek, the auto refractor, got for a reading, and
16 depending on how close the auto -- the auto refractor
17 was, you would either do it over the glasses -- do the
18 refraction over the glasses or you would take the
19 glasses off and do it without.
20 Q. The notion being that you're now going to test
21 them with their best corrected vision?
22 A. You're going to try to get them to their best
23 corrected vision.
24 Q. Okay. So you put them -- you get them to their
25 best corrected vision, correct?

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1 the Snellen and what the vision was.
2 Q. Okay. So when you say -- the first Snellen
3 vision was taken with whatever prescription they came
4 in the door with?
5 A. Yes.
6 Q. Which may have been none or may have been some?
7 A. Yes.
8 Q. And you recorded that on -- in the first instance
9 on a yellow stickie note?
10 A. Depending on the age, yes, and if they had
11 cataract surgery already.
12 Q. And let's talk about that for a moment. What was
13 your understanding of whose vision was to be recorded
14 on the stickie notes in the first instance?
15 A. Forty-five and above.
16 Q. With no prior cataract surgery?
17 A. Correct.
18 Q. Who told you that?
19 A. I don't know. That was just one of the things
20 that was relayed to me when I first started there.
21 Q. Did Dr. Chase tell you that?
22 A. No. Dr. Chase and I did not talk that much.
23 Q. So one of the other employees told you that?
24 A. Yes.
25 Q. Is it also the case -- would it be accurate to

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1 A. Correct.
2 Q. Then what happens?
3 A. You write that correction, whatever the
4 correction got down to, on the Snellen --
5 Q. On the --
6 A. I mean on the yellow stickie note.
7 Q. Okay. So now on the stickie note you've got
8 their Snellen with present prescription, correct?
9 A. Correct.
10 Q. And below that you've got the prescription that
11 you believe would give them their best corrected
12 vision?
13 A. Yes.
14 Q. How is that expressed?
15 A. In brackets. Well, you have your brackets here
16 to say -- I guess I don't know what you're saying.
17 Q. I know how Snellen is expressed, 20 over
18 something.
19 A. Oh. The same way.
20 Q. Oh, okay. So you've -- now let me make sure I
21 understand. You've taken their Snellen with their
22 current prescription. You have gotten them to where
23 you think they have their best corrected vision. And
24 then you redo the Snellen; is that right?
25 A. While they're in the refractor --

20 (Pages 77 to 80)

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1 Q. Yup.
 2 A. -- you test one eye at a time looking down at the
 3 Snellen chart, and that's how you get your answer on
 4 what they can see now that you've corrected them.
 5 Q. And the way to distinguish -- so you're writing
 6 down another Snellen vision?
 7 A. Yes.
 8 Q. This time 20 over something?
 9 A. Yes.
 10 Q. And you're putting parentheses around that to
 11 indicate that it is best corrected Snellen?
 12 A. Actually, I thought you were asking what these
 13 brackets meant. The Snellen you would just have a top
 14 and a bottom. You'd put a line through indicating
 15 this was the first one and this was the second one.
 16 Q. And everybody knew that the first one was present
 17 prescription and the second one was best corrected?
 18 A. Yes.
 19 Q. I do want to go to what you were talking about,
 20 though. You were referring to Exhibit 6 in the
 21 left-hand side column. There's a box marked manifest
 22 refraction. And it's surrounded by brackets.
 23 A. Yes.
 24 Q. Tell me what -- tell me what you were trying to
 25 tell me about that.

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1 A. That the brackets meant that it was a refraction.
 2 The brackets meant that you did a refraction. I -- I
 3 can't quite remember. It's been so long that I -- but
 4 it meant that you did a refraction.
 5 Q. What about the number above that under the Nidek
 6 cyclo? Is that just repeating what you got off the
 7 tape?
 8 A. The --
 9 Q. Under Nidek?
 10 A. Yeah. That -- the Nidek --
 11 Q. Yes.
 12 A. -- where it says -- yes. That's the right eye.
 13 That's what you got is the minus 9.50, plus .75,
 14 axis 100, and the left eye OS is minus 10.25, plus
 15 2.25, axis 85.
 16 Q. So you're just putting in there what you got off
 17 the tape?
 18 A. Yes.
 19 Q. Under manifest refraction, going down a box,
 20 where it says no significant improvement, do you see
 21 that?
 22 A. Yes.
 23 Q. What does that mean?
 24 A. Well, it appears that whoever did this test felt
 25 that the person didn't have any significant

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1 improvement when trying to correct them down to a
 2 better glasses prescription.
 3 Q. During this second Snellen test that you do,
 4 going back, you're in the exam room. You've done your
 5 second Snellen test with, you know, best corrected.
 6 That's being done with the patient's eyes in an
 7 undilated state, correct?
 8 A. Correct. Well, in this case it was -- it appears
 9 that it was done -- must have been done cyclo.
 10 Q. That's assuming that they did the Nidek prior to
 11 doing the Snellen, correct?
 12 A. Correct.
 13 Q. Okay. And you didn't take part in the care of
 14 this patient, so you can't be certain what order this
 15 patient went through the tests?
 16 A. Nope. No.
 17 Q. And at this point in the exam, Dr. Chase still
 18 hasn't seen the patient, correct?
 19 A. Correct.
 20 Q. And he hasn't taken part in these two tests of
 21 Snellen visual acuity?
 22 A. Correct. Unless they're -- I mean, there had
 23 been occasions where I called him in asking him, but
 24 not very often, to do the refraction because I
 25 couldn't get it down, but that was very slim.

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1 Q. Okay. So the common practice was for the techs
 2 to do this without his involvement?
 3 A. Correct.
 4 Q. But on occasion if you were having trouble, he
 5 wanted you to come to him to make sure you got it
 6 right?
 7 A. Correct.
 8 Q. Putting aside the fact that this is recorded on
 9 stickie notes for a moment, was there anything
 10 improper, to your knowledge, about how the Snellen
 11 acuity was tested and written down by the techs during
 12 the normal course of an exam?
 13 A. Skipping the fact that they were put on stickie
 14 notes, you're saying?
 15 Q. Yes.
 16 A. No.
 17 Q. No reason to think that the results of the
 18 Snellen tests that were performed by the techs were
 19 inaccurate?
 20 A. Correct.
 21 Q. So now you've got two Snellen scores. They're on
 22 a stickie note. First of all, what do you do with the
 23 stickie note?
 24 A. It goes right on the side of the chart. It sits
 25 there until -- it sits underneath this one so usually

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1 you can get a good look at the chart.
 2 Q. So looking at Exhibit 6, you would stick it
 3 somewhere in this right-hand column?
 4 A. Yes. Yes. Because his writing's not there yet.
 5 Q. Would it be about in the place where this little
 6 tape is --
 7 A. No.
 8 Q. -- presently located?
 9 A. No. That is the lensometer.
 10 Q. I understand. That's not the stickie note,
 11 obviously, but would the stickie note be in about
 12 where this is placed right now?
 13 A. It can be placed on top of it. It wouldn't
 14 really hurt anything.
 15 Q. What's this lensometer? Is that -- you're
 16 reading their present glasses to see what it is?
 17 A. Yes. Yes.
 18 Q. When would that be performed?
 19 A. I always did it when I came out of the room or
 20 if -- well, if I did it over their glasses, I would
 21 have to see how close the glasses were.
 22 Q. So you --
 23 A. It depended.
 24 Q. Depended when you did that. Any -- did you have
 25 any concerns about how the lensometer readings were

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1 settings on the BAT. And you just look through and
 2 you -- first time you see how low they can read on the
 3 C -- on the CST, and if they can read down to 20/60,
 4 20/70 or whatever, it's put down on the CST with BAT
 5 form, and then you go down and there's the contrast,
 6 which is circles, one on top, one on bottom, and they
 7 have to let you know if there's a line -- if there's
 8 lines in them, if the lines are on the top or if the
 9 lines are on the bottom, and you go as far as they can
 10 go.
 11 Q. So let me back us out a minute and go through
 12 that in a little bit more detail.
 13 A. Yes.
 14 Q. Are they in the same room as the room that you
 15 perform the Snellen tests in?
 16 A. Yes.
 17 Q. And you use the information you gain during the
 18 Snellen test to give them a mockup pair of glasses; is
 19 that right?
 20 A. Yes.
 21 Q. And that mockup pair of glasses is intended to
 22 give them their best corrected visual acuity?
 23 A. Yes.
 24 Q. And they are not dilated?
 25 A. They are not dilated.

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1 performed or recorded?
 2 A. No.
 3 Q. So now you've done Snellen, you've put the
 4 stickie in the chart. What happens next?
 5 A. Then depending on the age, you would do a CST
 6 with BAT.
 7 Q. So if it was a person who -- you think the rule
 8 is over 45 with no prior cataract surgery, right?
 9 A. Correct.
 10 Q. So let's say we've got one of those patients.
 11 A. Yes.
 12 Q. Do you do glare testing without the contrast
 13 sensitivity testing first?
 14 A. No. Yes. Sorry. Yes. You would do -- what you
 15 would do is you would get them -- make up a pair of
 16 glasses that were the best correction for them and
 17 then you would have them use the BAT, which is the
 18 held -- hand-held with the light on it.
 19 Q. And BAT is a hand-held brightness acuity tester;
 20 is that right?
 21 A. Correct. And you have the CST with BAT -- I mean
 22 the CST, which is the contrast sensitivity test, and
 23 you have them look through using the correction, you
 24 look through that with one eye occluded and it just
 25 has one setting. It doesn't have one, two, or three

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1 Q. And you're performing really two tests during
 2 this portion of the exam, correct?
 3 A. Correct.
 4 Q. Both of which require the patient to use a
 5 hand-held BAT tester?
 6 A. Yes.
 7 Q. What do you call the first test?
 8 A. It's a Snellen. It's -- I guess it's another
 9 Snellen, but it's on a separate board.
 10 Q. So are they looking at exactly the same sort of
 11 chart that they were looking at when you did your
 12 Snellen exam?
 13 A. Different letters.
 14 Q. Okay. Different letters. So they can't memorize
 15 things?
 16 A. Right.
 17 Q. But same idea where it's a dark black -- a series
 18 of dark black letters on a bright white background?
 19 A. Yes.
 20 Q. And the letters get smaller as you go down the
 21 chart?
 22 A. Yes.
 23 Q. And each line of the chart corresponds to a 20
 24 over something visual acuity?
 25 A. Yes.

22 (Pages 85 to 88)

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1 Q. And they're looking -- they're occluding one eye
 2 and placing the hand-held BAT tester over their other
 3 eye and telling you how low they can read?
 4 A. Correct.
 5 Q. And from that you get a visual acuity measurement
 6 expressed as 20 over something?
 7 A. Correct.
 8 Q. I'm going to show you what we have marked as
 9 Landry Exhibit 10 and ask you to flip to the last page
 10 of that, please. The test we were just talking about,
 11 which I'm going to call a glare test, okay? It's
 12 Snellen with glare?
 13 A. Um-hum.
 14 Q. Would that be an accurate way to describe it?
 15 A. Yes.
 16 Q. Is that recorded -- I'm asking you to turn to the
 17 last page of Landry -- what did I say this was? 10.
 18 A. 10.
 19 Q. Which has a number on the bottom marked MR001136.
 20 Do you see that?
 21 A. Um-hum. Yes.
 22 Q. Where on this -- first of all, are the results of
 23 that glare test recorded on a sheet like this?
 24 A. Yes.
 25 Q. And is this a preprinted sheet that's provided by

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1 Dr. Chase seen the patient yet?
 2 A. No.
 3 Q. Has he taken part in this test?
 4 A. No.
 5 Q. Any reason that you know of to think that the
 6 test results that you got in this portion of your
 7 patient testing were faked or fudged or inaccurate?
 8 A. No.
 9 Q. Any -- did you have any concerns about how these
 10 test results were recorded on this sheet?
 11 A. No.
 12 Q. So you didn't identify any problems with the
 13 glare testing?
 14 A. No.
 15 Q. What happens next?
 16 A. Are you asking for the rest of the --
 17 Q. Yeah. The rest of this portion of the exam.
 18 A. They do the C -- the contrast part where they
 19 have the circles, one on top of each other, and they
 20 have to go down the line and be able to identify if
 21 the lines were in the top or the bottom of that. So
 22 you go down the line one, two, three, four.
 23 Q. What did you call that test?
 24 A. The same thing. It was a contrast sensitivity
 25 testing.

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1 a test manufacturer or something like that?
 2 A. Yes.
 3 Q. Does it come in a note -- a bound note pad?
 4 A. Yes.
 5 Q. This isn't something that you believe was
 6 prepared by Dr. Chase?
 7 A. No.
 8 Q. Where on this sheet does that glare test result
 9 get recorded?
 10 A. Where there's circled glare and then there's the
 11 OD and the OS, right and left.
 12 Q. So in this case the results of the test we just
 13 talked about were 20/80, 20/80?
 14 A. Yes.
 15 Q. And this is a test -- a battery of tests that you
 16 performed on this exhibit, right?
 17 A. Yes. My name's down there.
 18 Q. We know that because your initials are on the
 19 bottom?
 20 A. Yes.
 21 Q. And so for this patient, you performed a glare
 22 test with best corrected vision, undilated pupils, and
 23 got 20/80, 20/80?
 24 A. Yes.
 25 Q. Then what -- at this point in a normal exam has

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1 Q. And do you know what the purpose of that test
 2 was?
 3 A. To see if glare was bothering them for early
 4 growth signs and what glare did to them.
 5 Q. And what was the purpose of the immediately prior
 6 test, the other glare test, where they were looking at
 7 the Snellen chart?
 8 A. Also to see what their distance was with glare,
 9 see how it affected their vision.
 10 Q. So would it be fair to say, and I want you to
 11 correct me if I'm wrong, that the first glare test is
 12 to check distance vision under glare conditions?
 13 A. Correct.
 14 Q. And the second portion of the test is to test how
 15 well they pick up contrasts under glare conditions?
 16 A. Correct.
 17 Q. And is this test performed in the same way; that
 18 is, with best corrected visual acuity and with the
 19 patient's eyes in an undilated state?
 20 A. Yes. You just go down the chart.
 21 Q. And they're looking at a chart and we're no
 22 longer dealing with letters anymore; we're dealing
 23 with little circles that have waves through them,
 24 right?
 25 A. Just lines, yes.

23 (Pages 89 to 92)

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- 1 Q. Lines. And they're telling you how far they can
- 2 get on that chart and recognize the direction in which
- 3 the lines are running?
- 4 A. They always run the same way, but yes. They're
- 5 just thinner than others, and they're top or bottom.
- 6 Q. Explain that to me in more detail. When they're
- 7 looking at the chart, what are they telling you? They
- 8 look at the first set of circles. What do they have
- 9 to tell you?
- 10 A. They say if they can see the lines on the top of
- 11 number one or the bottom of number one.
- 12 Q. So the lines are either in the top or the bottom,
- 13 but not both?
- 14 A. Correct.
- 15 Q. And they have to correctly identify which of each
- 16 pair of circles contains the lines?
- 17 A. Yes.
- 18 Q. And do you then record that test result on the
- 19 bottom half of this sheet that is the last page of
- 20 Exhibit 10 marked MR1136?
- 21 A. Yes. And they're color-coded.
- 22 Q. So in an original we could tell which eye is the
- 23 left and which eye is the right by the color in which
- 24 the line is drawn?
- 25 A. Yes.

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- 1 Q. But in this black-and-white copy we can't tell
- 2 that?
- 3 A. Yes.
- 4 Q. Is Dr. Chase present for this exam?
- 5 A. No.
- 6 Q. Has the patient seen Dr. Chase by the time he
- 7 does this exam?
- 8 A. No.
- 9 Q. Did you have any concerns or complaints about how
- 10 this exam was performed or recorded?
- 11 A. No.
- 12 Q. Going back to the final page of Exhibit 10 in the
- 13 contrast -- the second half of the sheet, there are
- 14 two charts, one on the left and one on the right, and
- 15 here the right-hand chart is filled out, and the word
- 16 glare is circled above it, right?
- 17 A. Yes.
- 18 Q. Does that mean that this test was performed with
- 19 that hand-held glare tester?
- 20 A. Yes.
- 21 Q. And was it always indicated whether or not it was
- 22 performed with or without glare?
- 23 A. Yes. It was always with glare, but yes.
- 24 Q. But it was recorded when it was done?
- 25 A. Yes.

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- 1 Q. Okay. Then what happens?
- 2 A. Then they -- you're done in the exam room. You
- 3 go out -- you know, you do your lensometer if you
- 4 needed to, go -- have them do the -- if they were
- 5 doing a visual field, 24-2, whatever they did, you
- 6 know, depending on if they were cataract -- a glaucoma
- 7 suspect or not.
- 8 Q. So glaucoma suspect would do a visual fields
- 9 test, right?
- 10 A. They all did visual fields test, but one would do
- 11 a different one than the others.
- 12 Q. Who administered the visual fields test?
- 13 A. I believe there was a protocol saying that if a
- 14 patient was glaucoma suspect, then they did a certain
- 15 test, and if they didn't, then they did that, but
- 16 Sally was the ones -- if she was there, most likely --
- 17 most of the time did them.
- 18 Q. What was Sally's last name?
- 19 A. I don't know.
- 20 Q. Okay. She was the -- she was a dedicated visual
- 21 fields person, more or less?
- 22 A. Yes.
- 23 Q. Did you ever perform visual fields tests?
- 24 A. Yes.
- 25 Q. Any -- were the visual fields done in a dilated

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- 1 or undilated state?
- 2 A. They were dilating.
- 3 Q. During that time?
- 4 A. During that time.
- 5 Q. Okay. So let's back up just a second, then.
- 6 Between the end --
- 7 A. I didn't say that. You dilate the patients.
- 8 Q. After the CST with BAT?
- 9 A. After the CST with BAT, you dilate them. You
- 10 write down the time that you -- you do pressures.
- 11 Dilate them, then write down the time. I'm sorry.
- 12 Q. And you do pressures in order to -- that's a
- 13 glaucoma test, correct?
- 14 A. It's one of the glaucoma screenings.
- 15 Q. And you write down the time because it matters
- 16 when in the day you take pressures, right?
- 17 A. Yes. Because it can vary throughout the day.
- 18 Q. And have you dilated before or after pressures?
- 19 A. After.
- 20 Q. Okay. So you do pressures.
- 21 A. Yes.
- 22 Q. Do you have any concerns about how pressures were
- 23 taken or recorded in Dr. Chase's office?
- 24 A. Nope.
- 25 Q. How do you do dilation?

24 (Pages 93 to 96)

Page 97

1 A. You use Mydriacyl.
 2 Q. Which is a drug?
 3 A. It's an eyedrop, yes.
 4 Q. And do you have to look in the patient's eyes
 5 before you administer that?
 6 A. Yes. I skipped a lot of stuff. Sorry. You do
 7 slit lamp where you look at the anterior chamber and
 8 make sure that it's open and you just look at the
 9 lids, make sure that there's no lumps or bumps that
 10 need to be brought to Dr. Chase's attention, and if
 11 they look good, you do the pressures. Everything
 12 looks great, you can dilate them and set them up with
 13 the fields.
 14 Q. So tell me again what you're looking for as the
 15 tech when you're doing your quick slit lamp look at
 16 the eyes. Is it for the purposes of making sure you
 17 can safely dilate them, or is it for other purposes?
 18 A. It's for both. It's mainly just to make sure
 19 that you can safely dilate them, because you don't
 20 want to send them in a glaucoma -- an acute glaucoma
 21 attack.
 22 Q. And how can you tell by looking at their eyes
 23 whether it's safe to dilate them?
 24 A. Because there's an angle in the eye at the corner
 25 of each eye that you can look into, and it's grayish

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1 Q. You performed it on occasion?
 2 A. Correct.
 3 Q. Any concerns about how fields were performed or
 4 recorded?
 5 A. No.
 6 Q. They're recorded automatically by the machine,
 7 correct?
 8 A. Yes.
 9 Q. And what was the purpose of the visual fields
 10 exam?
 11 A. To see if there's any peripheral losses in the
 12 patient.
 13 Q. And what is -- and why is that done?
 14 A. It is done in -- I don't actually understand what
 15 you're asking, why -- there's different reasons to do
 16 visual fields.
 17 Q. What are the reasons to do visual fields that
 18 you're aware of?
 19 A. To see if their side vision, if they have any
 20 losses in their side vision; it's to monitor glaucoma,
 21 how it's progressing, if it's progressing. Hopefully
 22 it's not, but ... and to see if they have any loss of
 23 vision. I believe you can also tell if they have loss
 24 of vision due to retinal detachments or anything like
 25 that.

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1 in color and it's a slit that you can see that the
 2 patient's angle is open and if it's -- well, that's
 3 what you do.
 4 Q. And that's the main thing you're looking for
 5 during that slit lamp?
 6 A. Yes. That's his main concern.
 7 Q. But while you're looking, you also see what else
 8 you can tell?
 9 A. If there's -- when you're looking at the lids,
 10 you're seeing if there's anything that needs to be
 11 brought to his attention, but it really wasn't
 12 anything that you had to be too concerned about,
 13 because he was looking anyways.
 14 Q. So your main concern was the angle for purposes
 15 of dilation?
 16 A. Yes.
 17 Q. And you weren't focusing on other things really
 18 as you looked at the eye?
 19 A. No.
 20 Q. Then you put the dilating drops in?
 21 A. Yes.
 22 Q. And you send them to fields?
 23 A. Yes.
 24 Q. Sally did fields most of the time?
 25 A. Yes.

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1 Q. How long does it take for dilation drops to wear
 2 off?
 3 A. Anywhere from four to six hours depending on the
 4 eye. You can't really give an exact.
 5 Q. And what's the effect of the dilation on your
 6 near vision, your reading vision?
 7 A. It decreases. You can't see much up close.
 8 Q. What is the effect on your distance vision?
 9 A. It stays about the same.
 10 Q. So now they've done visual fields. Are there
 11 other -- there are other possible tests that you
 12 referred to earlier.
 13 A. Yes.
 14 Q. What other tests might be performed?
 15 A. Well, if they did the visual fields, you might do
 16 the Nidek and do the refraction if that wasn't done at
 17 that time. That would be the time that you did them,
 18 after they were dilated. And then they -- if they --
 19 if everything went to plan, you know, did everything,
 20 all that whole list that I said originally, then
 21 they'd go and see him.
 22 Q. All right. So they go in to see him meaning they
 23 go into the exam room with Dr. Chase?
 24 A. Yes. Yes.
 25 Q. Does he work out of a single exam room and all

<p style="text-align: right;">Page 101</p> <p>1 the patients come to him, or does he move around from 2 room to room? 3 A. Two rooms. 4 Q. So that he could have two patients going at 5 once -- 6 A. Yes. 7 Q. -- basically? How does the exam begin, 8 Dr. Chase's exam? 9 A. He -- he goes into the -- well, first he looks at 10 the chart. He'll look at the chart and see what's on 11 there, and then he'll sit down in his chair, and if 12 everything looks okay to him, I believe he -- I don't 13 remember which order he did it in, but I believe he 14 did the -- a lot of times the dilated indirect. I 15 don't remember. But he -- excuse me. He'd do his own 16 slit lamp exam first. 17 Q. Okay. 18 A. And then the scribe, he'd say things, and the 19 scribe would be writing down as he went. 20 Q. And let's turn to Exhibit 6 for a moment, which 21 you have in front of you. I'm turning to the second 22 page. There are a number of categories numbered down 23 the left-hand side. For instance, number 3 reads 24 ocular motility. 25 A. Yes.</p>	<p style="text-align: right;">Page 103</p> <p>1 A. Yes. 2 Q. And then the anterior chambers? 3 A. Yes. 4 Q. And then ocular adnexia? 5 A. Yes. 6 Q. And then the pupils and the -- is that irises or 7 no? Pupils and? 8 A. It's irides. 9 Q. Irises. Does he read that aloud, as well? 10 A. Yeah -- that he can't -- that should have been 11 marked previously, because he can't tell what the 12 pupils look like at that point, because they're 13 dilated, and if there's an irregular pupil, he's not 14 going to be able to -- or -- yeah. 15 Q. So that's not something his slit lamp examination 16 is meant to determine? 17 A. Correct. 18 Q. Okay. And then category 10, dilated exam, does 19 he talk about the optic discs? 20 A. Yes. 21 Q. And you record -- and the scribe records 22 something there? 23 A. Yes. 24 Q. And the posterior segments? 25 A. Yes.</p>
<p style="text-align: right;">Page 102</p> <p>1 Q. And then it goes down to number 13. Is he 2 examining at least some of these categories as he's 3 looking through the slit lamp and reading aloud his 4 findings? 5 A. Most of the time it's all of that. 6 Q. So does he tell you something about ocular 7 motility? 8 A. Yes. 9 Q. And the scribe writes that down? 10 A. Yes. 11 Q. And he says this out loud, correct? 12 A. Yes. 13 Q. So the scribe can hear it; the patient can hear 14 it? 15 A. Yes. 16 Q. And then he says some things that go into the 17 slit lamp exam category? 18 A. Yes. 19 Q. And then he reads out his findings regarding 20 category 5, conjunctiva? 21 A. Conjunctiva. 22 Q. Is that right? 23 A. Yes. 24 Q. Then he reads aloud his findings as to the state 25 of the lenses?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. And then does he -- detailed indirect? 2 A. Yes. 3 Q. What's that? 4 A. That is when he takes -- just give me one second, 5 please. 6 I believe that's the one where he uses 7 the -- I believe it's a 20-diopter lens and places it 8 in front of the eye and has them -- he has a head lamp 9 on. I might be getting them confused, but he has the 10 head lamp on and is looking into the eye, looking at 11 the anterior segments of the eye, and can see the 12 optic disc and -- to see if there's any holes or any 13 problems with the eye. He can view what the optic 14 nerves look like and everything. 15 Q. And then category 13 is VF testing. Is that 16 visual fields? 17 A. Yes. 18 Q. So that's something that's been done already? 19 A. Yes. And he'll say, Visual fields within normal 20 limits. 21 Q. Because he's looked at the visual fields 22 results -- 23 A. Yes. 24 Q. -- that he's -- that have come to him with the 25 chart?</p>

<p style="text-align: right;">Page 105</p> <p>1 A. Yes.</p> <p>2 Q. So let me back up just a minute, then, just so I</p> <p>3 understand. He gets the chart.</p> <p>4 A. Yes.</p> <p>5 Q. It has all of the information in it that's been</p> <p>6 previously recorded by the techs, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And the first thing he does is he looks through</p> <p>9 and he takes at least an initial look at all of that</p> <p>10 information?</p> <p>11 A. Yes.</p> <p>12 Q. Where at this point is Snellen vision recorded?</p> <p>13 A. He'll write it down.</p> <p>14 Q. At that point?</p> <p>15 A. Yes.</p> <p>16 Q. So upon getting the chart and going in to see the</p> <p>17 patient, he will write the Snellen vision down?</p> <p>18 A. No.</p> <p>19 Q. Okay. Tell me.</p> <p>20 A. I'm sorry.</p> <p>21 Q. That's okay.</p> <p>22 A. He -- when he goes into the room, when he first</p> <p>23 looks at everything, he'll look at the -- the stickie</p> <p>24 note and he'll write it down wherever he's going to</p> <p>25 write it down. Usually, you know, the top part goes</p>	<p style="text-align: right;">Page 107</p> <p>1 OD 20/25 plus, OS 20/30 plus; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Are you aware of any instance in which he</p> <p>4 incorrectly transferred that corrected Snellen vision</p> <p>5 from the stickie note to this sheet?</p> <p>6 A. No.</p> <p>7 Q. So you have no reason to think that the Snellen</p> <p>8 vision as recorded here is not the same as the Snellen</p> <p>9 vision that the tech recorded on the stickie note?</p> <p>10 A. No.</p> <p>11 Q. And as a result of transferring it here, you've</p> <p>12 got a single page with all of the relevant visual</p> <p>13 acuities, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Because you've got Snellen corrected on top; then</p> <p>16 you have Snellen with glare below that, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And then you have contrast sensitivity with glare</p> <p>19 below that, correct?</p> <p>20 A. Correct.</p> <p>21 Q. So now all of the visions that he cares about are</p> <p>22 in one place?</p> <p>23 A. Yes.</p> <p>24 Q. What did -- if anything, did he record on to the</p> <p>25 front of the chart, and we can use the same Exhibit 10</p>
<p style="text-align: right;">Page 106</p> <p>1 here and whatever. And he'll throw that in the trash.</p> <p>2 And -- like crumple it up, throw it in the trash, or</p> <p>3 put it on your desk so that you can throw it away,</p> <p>4 because it's no longer needed.</p> <p>5 Q. Where is he recording the best corrected Snellen</p> <p>6 that was on that Post-it?</p> <p>7 A. Usually on the CST with BAT.</p> <p>8 Q. Okay. So let's look for a minute at Exhibit 10,</p> <p>9 which has the CST with BAT slip that you initialed.</p> <p>10 A. Yes.</p> <p>11 Q. Actually, I'm going to have you look at this one</p> <p>12 instead.</p> <p>13 A. Oh, I'm sorry.</p> <p>14 Q. That's Exhibit 10. Look at the last page of</p> <p>15 Exhibit 10, which is page numbered MR001116. Do you</p> <p>16 see that?</p> <p>17 A. Yes.</p> <p>18 Q. Upon getting the chart, as I understand it,</p> <p>19 Dr. Chase takes the vision -- the best corrected</p> <p>20 vision that was on that stickie note and transfers it</p> <p>21 to the top of this sheet that has the results of the</p> <p>22 glare and contrast sensitivity testing?</p> <p>23 A. Yes.</p> <p>24 Q. And, for instance, in this case he wrote, Poor</p> <p>25 quality VA Snellen, in parentheses, meaning corrected,</p>	<p style="text-align: right;">Page 108</p> <p>1 as an example, at the time -- at this point in the</p> <p>2 exam? And I'm sorry. The first page is stapled on</p> <p>3 backwards here, as you've seen, so -- so looking at</p> <p>4 what is really the second page that we have of -- of</p> <p>5 Exhibit 10, does he -- does Dr. Chase at the time he</p> <p>6 comes into the exam room and reviews the chart</p> <p>7 transfer any information onto the front page of the</p> <p>8 chart?</p> <p>9 A. The vision, and he puts down the manifest</p> <p>10 refraction numbers, but it doesn't -- sorry.</p> <p>11 Q. That's all right. What were you going to say?</p> <p>12 A. I don't see where it matches with this. It says</p> <p>13 that I got 20/80, and here it says vision is 20/100.</p> <p>14 Q. So in this case you've got glare vision of 20/80?</p> <p>15 A. Yes.</p> <p>16 Q. On Page MR001136?</p> <p>17 A. Yes.</p> <p>18 Q. And it says 20/100 over in the vision section of</p> <p>19 the first page of the chart?</p> <p>20 A. Yes.</p> <p>21 Q. And if you look back to Page 1136 again, the</p> <p>22 contrast sensitivity testing has two lines drawn</p> <p>23 through the 20/100 section, more or less, correct?</p> <p>24 A. Okay. Yup.</p> <p>25 Q. Is that right?</p>

<p style="text-align: right;">Page 109</p> <p>1 A. Yes.</p> <p>2 Q. And that, at least, is the same as the 20/100 --</p> <p>3 the same numbers as recorded on the front of the</p> <p>4 chart, right?</p> <p>5 A. Okay.</p> <p>6 Q. Was it your understanding that he was</p> <p>7 recording -- so we have -- let me back up.</p> <p>8 We have three test results now written on</p> <p>9 the glare testing sheet, an example of which is at</p> <p>10 1136. Which of those vision results do you believe he</p> <p>11 was normally recording on the front page of the chart</p> <p>12 upon receiving the information?</p> <p>13 A. The glare Snellen acuity.</p> <p>14 Q. Okay. But in this case that doesn't appear to</p> <p>15 have been the case, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you said he also recorded manifest refraction</p> <p>18 on to the front of the chart at that point?</p> <p>19 A. Yes.</p> <p>20 Q. And he's taking that information from the -- also</p> <p>21 from the stickie?</p> <p>22 A. Yes, but I don't see it there, so ...</p> <p>23 Q. Where would that have normally been recorded?</p> <p>24 Somewhere on the first page of the chart?</p> <p>25 A. I thought so, yes.</p>	<p style="text-align: right;">Page 111</p> <p>1 Q. And you said you were aware of -- personally</p> <p>2 aware of two occasions on which he asked the techs --</p> <p>3 or the scribes to reperform the CST with BAT during</p> <p>4 the course of his examination?</p> <p>5 A. Yes.</p> <p>6 Q. And you couldn't remember if that was before or</p> <p>7 after he looked at their eyes through the slit lamp?</p> <p>8 A. It would be before -- I mean it would be after.</p> <p>9 Q. It would be after he looked at their eyes?</p> <p>10 A. Yes.</p> <p>11 Q. Are you pretty certain about that?</p> <p>12 A. Now I am, yes.</p> <p>13 Q. So in each case in which you're aware that he had</p> <p>14 the slit lamp -- I'm sorry, the CST with BAT</p> <p>15 reperformed, he had seen the first result, he had</p> <p>16 examined their eyes through the slit lamp, and then</p> <p>17 had said to you, I want this reperformed?</p> <p>18 A. Yes.</p> <p>19 Q. Would you reperform the CST with BAT in the exam</p> <p>20 room, or would you move the patient back to the first</p> <p>21 room they were in?</p> <p>22 A. It depends on how busy you were.</p> <p>23 Q. You could do it in either place?</p> <p>24 A. Yes.</p> <p>25 Q. On the two occasions that you were involved, did</p>
<p style="text-align: right;">Page 110</p> <p>1 Q. Okay. So during his exam, Dr. Chase is speaking</p> <p>2 aloud his findings so the tech can write them down in</p> <p>3 the -- or the scribe can write them down in the</p> <p>4 appropriate portion of the chart, right?</p> <p>5 A. Correct.</p> <p>6 Q. And if the lens were clear, he'd say lens clear,</p> <p>7 and you'd check that box?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And if he would say cataracts OU, you'd</p> <p>10 check that box and write down cataracts OU?</p> <p>11 A. You'd write "other," and then you'd write on the</p> <p>12 side what it is that he said that they had.</p> <p>13 Q. So taking Exhibit 10 and looking at what was the</p> <p>14 first page of our copy here marked 1131 --</p> <p>15 A. Yes.</p> <p>16 Q. -- when you got to lenses, normally the scribe</p> <p>17 would check the "other" box under category 6 if he</p> <p>18 read aloud that there were cataracts, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And then the right-hand side they would write</p> <p>21 down his description of the cataracts?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And as he said that, the patient could</p> <p>24 hear it, also, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 112</p> <p>1 you -- did you yourself reperform the CST with BAT</p> <p>2 test?</p> <p>3 A. I don't believe so. I don't know.</p> <p>4 Q. You don't recall?</p> <p>5 A. I do not recall.</p> <p>6 Q. Do you remember where it was reperformed?</p> <p>7 A. I do not recall.</p> <p>8 Q. So it's reperformed, and you get a second sheet,</p> <p>9 correct?</p> <p>10 A. Yes. Correct.</p> <p>11 Q. A second sheet that looks a lot like the last</p> <p>12 page of Exhibit 10, Page 1036?</p> <p>13 A. It's the same sheet.</p> <p>14 Q. Same sheet?</p> <p>15 A. Same sheet.</p> <p>16 Q. Same type of sheet; they weren't writing over the</p> <p>17 old test results, correct?</p> <p>18 A. Correct.</p> <p>19 Q. So at the end you had two sheets, the forms of</p> <p>20 which were exactly alike, but it had -- information</p> <p>21 was recorded on each of them separately?</p> <p>22 A. Correct.</p> <p>23 Q. When you reperformed the test at Dr. Chase's</p> <p>24 request, or when it was reperformed, to your</p> <p>25 knowledge, did they do both portions of the test; that</p>

<p style="text-align: right;">Page 113</p> <p>1 is, Snellen with glare and contrast sensitivity with 2 glare? 3 A. Yes. 4 Q. Okay. So both of those were reperformed? 5 A. Yes. 6 Q. And both of them were recorded on a second glare 7 testing form? 8 A. Correct. 9 Q. And then Dr. Chase comes back into the room to be 10 with the patient again? 11 A. Yes. 12 Q. And at this point he has, in addition to the 13 information he had before, an additional glare test 14 result sheet? 15 A. Correct. 16 Q. Did you ever see him personally discard either of 17 the two glare test results? 18 A. No. 19 Q. Did you hear about -- did other people tell you 20 they did? 21 A. Yes. 22 Q. Who? 23 A. Melissa Lozier. 24 Q. Okay. And how many occasions did Melissa Lozier 25 believe she saw Dr. Chase discard a glare test result</p>	<p style="text-align: right;">Page 115</p> <p>1 A. No, I do not know. 2 Q. I apologize, because I'd forgotten your answer on 3 this. Do you recall whether you reperformed the CST 4 with BAT results on those one or two occasions when 5 you -- 6 A. I do not recall. 7 Q. Okay. Is it safe to say, then, you also don't 8 recall what the results of the first and second tests 9 were on those two occasions? 10 A. No. 11 Q. So on the two occasions of which you're aware, 12 you don't know whether the first results were better 13 or worse than the second results? 14 A. No. 15 Q. Was Dr. Chase in the room with the tech or the 16 scribe when the second CST with BAT was performed? 17 A. No. 18 Q. And he did not perform that test himself, 19 correct? 20 A. There was times that he did if -- if it was busy, 21 but no. 22 Q. Normally he had the techs redo it? 23 A. Correct. 24 Q. And did you ever hear anybody complaining that 25 the techs falsified the results of that test --</p>
<p style="text-align: right;">Page 114</p> <p>1 sheet? 2 A. I'm not sure, but numerous times. And Sandy 3 Miller also did. 4 Q. And Sandy Miller also saw him? 5 A. Yes. 6 Q. Did each of them tell you that personally? 7 A. Yes. On a -- one was on more of a venting, and 8 one was on a -- telling me after this had happened. 9 Q. Which was which? 10 A. Melissa was telling me after this had happened 11 that she had personally seen him. And Sandy was 12 telling me on a venting day. 13 Q. While you were both working there? 14 A. Yes. 15 Q. Did either of them say the circumstances under 16 which -- tell you the circumstances under which -- 17 A. No. 18 Q. -- this happened? 19 A. No. 20 Q. Did either of them tell you if they knew whether 21 he discarded the first or the second test result? 22 A. No. 23 Q. You said Melissa saw it on multiple occasions. 24 Do you know if Sandy Miller saw it on one or more than 25 one occasions?</p>	<p style="text-align: right;">Page 116</p> <p>1 A. No. 2 Q. So as far as you're aware, the results as 3 recorded by the techs were accurate? 4 A. Correct. 5 Q. At that point in the exam would it have been 6 possible to undilate the patient's eyes in order to do 7 the CST with BAT? 8 A. Yes. 9 Q. How long would that have taken? 10 A. At least 20 minutes to an hour. 11 Q. And this is as a result of reversal drops? 12 A. Yes. 13 Q. How well did those work, in your experience? 14 A. It depended on the eyes. Some people they didn't 15 work at all on. Some people they did. It just -- 16 hard to tell. 17 Q. And some people it could take much longer than an 18 hour if they were going to work? 19 A. Absolutely. 20 Q. Did you have patients who it took a really long 21 time to -- 22 A. Some people said it took all night even though 23 they used reversal eyedrops. 24 Q. During the course of the exam that he performed, 25 did Dr. Chase also question the patient regarding</p>

<p style="text-align: right;">Page 117</p> <p>1 their symptoms?</p> <p>2 A. Yes.</p> <p>3 Q. What sort of things did he ask them?</p> <p>4 A. If glare was bothering them, if they had a hard</p> <p>5 time seeing at night, if the rainy nights bothered</p> <p>6 them. Just questions like that.</p> <p>7 Q. Did -- did you have concerns about that</p> <p>8 questioning?</p> <p>9 A. No.</p> <p>10 Q. Did you think he had some ulterior motive in</p> <p>11 asking those questions other than to find out what</p> <p>12 their symptoms were?</p> <p>13 A. So he could do cataract surgery, yes.</p> <p>14 Q. Okay. Why do you say that?</p> <p>15 A. Because if patients -- some patients that he had</p> <p>16 asked would say no, I don't have any problems, and</p> <p>17 with continuing asking, they would end up having</p> <p>18 problems.</p> <p>19 Q. Let me ask you this. Did he ask the same</p> <p>20 question to them over and over again, or did he go</p> <p>21 through sort of a progression of questions?</p> <p>22 A. In the -- in essence the same questions, just</p> <p>23 different wording.</p> <p>24 Q. Okay. Give me an example of that.</p> <p>25 A. Does -- let me see. Are you bothered at night by</p>	<p style="text-align: right;">Page 119</p> <p>1 going on. You could tell, because if you were looking</p> <p>2 towards the patient, they would look at you and be</p> <p>3 confused -- like have a confused look on their face in</p> <p>4 trying to understand exactly what it is that he was</p> <p>5 saying.</p> <p>6 Q. Okay. I am asking you to speculate to a certain</p> <p>7 extent here, and that I understand, because you can't</p> <p>8 get inside these patients' heads, but what do you</p> <p>9 think patients found confusing about being asked</p> <p>10 whether or not they had difficulty driving at night</p> <p>11 with oncoming headlights?</p> <p>12 A. Because they already answered the question and</p> <p>13 said no.</p> <p>14 Q. Okay.</p> <p>15 A. But then they're further being questioned and</p> <p>16 don't completely understand why no wasn't enough, what</p> <p>17 he was exactly getting at, so -- I just use that as an</p> <p>18 example, though, the car headlights.</p> <p>19 Q. Are there other examples you can give me?</p> <p>20 A. No. But, I mean, that was just a simple --</p> <p>21 Q. Well, you've said that he was asking them in</p> <p>22 order to justify cataract surgery --</p> <p>23 A. Yes.</p> <p>24 Q. -- is what you said earlier. And the one example</p> <p>25 you've given so far is asking about whether they have</p>
<p style="text-align: right;">Page 118</p> <p>1 glare. No, I'm not. Are you bothered by -- at night</p> <p>2 by glare with oncoming headlights coming at you. And</p> <p>3 it's almost -- it's in essence the same exact thing</p> <p>4 and it's kind of asking, you know, glare, headlights,</p> <p>5 and everything, but it would be -- you know, oh, yeah,</p> <p>6 well, actually, sometimes I am bothered by the lights</p> <p>7 of cars coming onto me.</p> <p>8 Q. Is it possible that some of these patients didn't</p> <p>9 really understand what he meant by "in glare</p> <p>10 conditions" but they did understand what he meant when</p> <p>11 he said with oncoming headlights?</p> <p>12 A. It's possible.</p> <p>13 MR. WINN: Object to the form.</p> <p>14 Q. Pardon?</p> <p>15 A. It's possible.</p> <p>16 Q. And were some -- would some people say no, I'm</p> <p>17 not bothered driving at night and then would say yes,</p> <p>18 I am bothered driving at night with oncoming</p> <p>19 headlights?</p> <p>20 A. Yes.</p> <p>21 Q. Do you think these patients were answering</p> <p>22 falsely when they said that?</p> <p>23 A. I think they were confused.</p> <p>24 Q. What were they confused by?</p> <p>25 A. Because they didn't really understand what was</p>	<p style="text-align: right;">Page 120</p> <p>1 trouble driving at night, whether they have trouble</p> <p>2 driving at night in glare, and whether or not they</p> <p>3 have trouble driving at night with oncoming</p> <p>4 headlights. Can you give me any other example that</p> <p>5 you can recall of questioning that you believe was</p> <p>6 intended to justify cataract surgery?</p> <p>7 A. Asking if daylight bothers them, sunny</p> <p>8 conditions; are they feeling that they're not able to</p> <p>9 see what they do want to see; can they read what they</p> <p>10 want to read; those kind of things.</p> <p>11 Q. And you believe that some people may have been</p> <p>12 confused by this questioning?</p> <p>13 A. Yes. Absolutely. The lifestyle sheet confused</p> <p>14 them, and they were answering as they were answering</p> <p>15 the lifestyle sheet.</p> <p>16 Q. And you know they were confused in answering the</p> <p>17 lifestyle sheet because they would ask you questions</p> <p>18 about it or you would see inconsistent answers?</p> <p>19 A. Yes.</p> <p>20 Q. But you would have the opportunity with the</p> <p>21 lifestyle sheet to make sure -- to look at it and talk</p> <p>22 to them about it and make sure they did in fact</p> <p>23 understand it?</p> <p>24 A. Sometimes, yes.</p> <p>25 Q. I mean, if you noticed that they were confused --</p>

<p style="text-align: right;">Page 121</p> <p>1 A. Absolutely.</p> <p>2 Q. -- you would stop and try to remedy that</p> <p>3 confusion, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And the reason you think they were confused</p> <p>6 during the exam is that they had a confused look on</p> <p>7 their face to you?</p> <p>8 A. Yes.</p> <p>9 Q. Did you ever stop Dr. Chase or try to remedy that</p> <p>10 confusion during the course of his exam?</p> <p>11 A. No.</p> <p>12 Q. As Dr. Chase was asking questions like the ones</p> <p>13 we were talking about; for instance, driving at night,</p> <p>14 who was writing down the patient's answers in the</p> <p>15 chart?</p> <p>16 A. They -- that didn't get wrote down.</p> <p>17 Q. That was not -- that did not get written down?</p> <p>18 A. No.</p> <p>19 Q. Okay. Patients were answering out loud, correct?</p> <p>20 A. Correct.</p> <p>21 Q. So were their complaints recorded in the chart</p> <p>22 anywhere -- or their answers, rather, recorded in the</p> <p>23 chart anywhere?</p> <p>24 A. No. Only what he wrote.</p> <p>25 Q. When would he write in the chart?</p>	<p style="text-align: right;">Page 123</p> <p>1 Q. Did Dr. Chase ever ask you to write in the chart</p> <p>2 something that was unsupported by what the patient had</p> <p>3 conveyed either orally to him or in the lifestyle</p> <p>4 questionnaires or eye history chart?</p> <p>5 A. Yes.</p> <p>6 Q. When?</p> <p>7 A. There was times where he'd say, Write this down,</p> <p>8 write down, Patient can't see to drive or read clearly</p> <p>9 or something like that. I can't remember the exact</p> <p>10 words.</p> <p>11 Q. Well, I want you to try to remember as -- as best</p> <p>12 you can.</p> <p>13 A. I am trying.</p> <p>14 Q. I understand. You say that he asked you to write</p> <p>15 in the chart, Patient can't see to drive --</p> <p>16 A. To drive or read clearly.</p> <p>17 Q. Can you remember any other examples of things he</p> <p>18 asked you to write in the chart?</p> <p>19 A. Nope.</p> <p>20 Q. When did he -- when during the course of the exam</p> <p>21 did he ask you to write those down?</p> <p>22 A. Towards the end.</p> <p>23 Q. While you, he, and the patient were in the exam</p> <p>24 room together?</p> <p>25 A. Yes. Yes.</p>
<p style="text-align: right;">Page 122</p> <p>1 A. Usually before he spoke with the patient, after</p> <p>2 he looked at the lifestyle sheet or whatever.</p> <p>3 Q. So usually before he asked the patient questions</p> <p>4 about their visual problems?</p> <p>5 A. Correct.</p> <p>6 Q. Did you ever hear him ask patients if they had</p> <p>7 difficulty reading?</p> <p>8 A. Excuse me?</p> <p>9 Q. Did you ever hear Dr. Chase ask patients if they</p> <p>10 had difficulty reading?</p> <p>11 A. I believe so, yes.</p> <p>12 Q. Did he ask them if they had difficulty reading in</p> <p>13 dim light?</p> <p>14 A. Yes.</p> <p>15 Q. Did he ask them about driving, if they had</p> <p>16 difficulty driving in the rain?</p> <p>17 A. Yes.</p> <p>18 Q. And when you -- just so I understand, when you</p> <p>19 were working as the scribe, those answers were not</p> <p>20 going into the chart as the patients were saying them</p> <p>21 out loud?</p> <p>22 A. No.</p> <p>23 Q. Do you know whether other scribes operated</p> <p>24 differently in that regard?</p> <p>25 A. I don't believe so.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. And would he ask you this out loud?</p> <p>2 A. He'd say that out loud, yes.</p> <p>3 Q. And would the patient -- did you ever have a</p> <p>4 patient object and say, I can read or I can drive?</p> <p>5 A. No.</p> <p>6 Q. And the reason you believe that it isn't -- that</p> <p>7 it wasn't supported is because the patient hadn't said</p> <p>8 anything to that effect during the -- during the exam?</p> <p>9 A. Change that, please.</p> <p>10 Q. Why did you -- I'm sorry.</p> <p>11 Why did you believe that what he was</p> <p>12 asking you to write down wasn't correct or wasn't</p> <p>13 supported?</p> <p>14 A. Because the patient didn't say that.</p> <p>15 Q. Is it possible that he was telling you that based</p> <p>16 on what he had gleaned from the eye history chart or</p> <p>17 the lifestyle questionnaire?</p> <p>18 A. Yes.</p> <p>19 Q. Is it possible he was telling you that based on</p> <p>20 the results of the tests that had been performed</p> <p>21 rather than on what the patient vocalized?</p> <p>22 A. Yes.</p> <p>23 Q. So you don't know -- on those instances when he</p> <p>24 asked you to write something down that the patient</p> <p>25 hadn't said out loud, you don't know if those comments</p>

<p style="text-align: right;">Page 125</p> <p>1 may have been supported by other information in the 2 chart? 3 A. No. 4 Q. No, you don't know? 5 A. No, I don't know. 6 Q. Okay. 7 (A short break was taken.) 8 BY MR. MILLER: 9 Q. We were talking about -- before we broke, we were 10 talking about whether or not Dr. Chase ever asked you 11 to write anything in the chart that had not been 12 vocalized by the patient. 13 A. Correct. 14 Q. Did Dr. Chase ever ask you to write something in 15 the chart that was the opposite of what the patient 16 said? 17 A. No. 18 Q. So earlier when you were talking about him 19 putting things in the chart that wasn't supported by 20 what the patient said, it wasn't that the patient had 21 said to the contrary; it was just that the patient 22 hadn't said anything about it? 23 A. Correct. 24 Q. Did you ever write anything in the chart at 25 Dr. Chase's request or otherwise that you knew lacked</p>	<p style="text-align: right;">Page 127</p> <p>1 A. Sometimes, but not always. 2 Q. Can you remember instances in which he asked them 3 more than twice whether or not they wanted to hear 4 about cataract surgery? 5 A. No. 6 Q. And if they did say yes, they wanted to hear 7 about it, he had a pretty standard list of things that 8 he told them about the expected -- the risks and 9 expected benefits of surgery, right? 10 A. Correct. 11 Q. And you understood that it was important that all 12 the patients got all of the information about the 13 risks and benefits? 14 A. Correct. 15 Q. And that -- and that that information and the 16 fact that they received that information got recorded 17 in a standardized way in the chart? 18 A. Correct. 19 Q. And that is why you had the note card -- 20 A. Yes. 21 Q. -- that we looked at earlier as Exhibit 3, 22 correct? 23 A. Yes. Correct. 24 Q. Was the choice of whether or not to have cataract 25 surgery always left to the patient in the end?</p>
<p style="text-align: right;">Page 126</p> <p>1 any factual support in the record? 2 A. No. 3 Q. Do you know whether Dr. Chase ever asked you to 4 put anything in the chart -- strike that. 5 Some patients that Dr. Chase saw he 6 diagnosed as having cataracts, correct? 7 A. Correct. 8 Q. And once he diagnosed them as having cataracts, 9 he would ask them if they wanted to hear about 10 cataract surgery? 11 A. Correct. 12 Q. Did people -- and if they said yes, then he would 13 explain the risks and benefits of cataract surgery to 14 them; is that right? 15 A. Correct. 16 Q. Did -- what if a patient said no, they didn't 17 want to hear about cataract surgery? 18 A. He would tell them that, you know, he does need 19 cataracts and that they would benefit from them, and 20 generally they would say okay, I'll hear about it. 21 Q. What if a patient then said, I understand, Doc, 22 but no, thanks, I'm seeing -- I'm seeing fine. Did 23 that happen? 24 A. Yes. 25 Q. Did he then push them further?</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Yes. 2 Q. In what ways other than the questioning that we 3 talked about earlier do you think Dr. Chase pressured 4 patients into surgery, if at all? 5 A. Bringing them down to talk to the nurse into the 6 cataract surgery scheduling room and telling -- you 7 know, having them at least talk to them first. 8 Q. And while you were there, the nurse was Mary 9 Clairmont, right? 10 A. There was two nurses. 11 Q. Who was the other one? 12 A. Susan. 13 Q. What was Susan's last name? 14 A. I don't know. We didn't go by last names that 15 much. Susan -- I'll think about it. I'll know it. 16 Q. Did you go into the nurse's room with the 17 patients and hear what the nurse had to say? 18 A. No. 19 Q. Did you ever go in with a patient to hear what 20 the nurse had to say? 21 A. No. 22 Q. In what way was having them see the nurse 23 pressure, in your view? 24 A. Having them come around the corner -- like having 25 them have to walk down the hall and go in to see</p>

<p style="text-align: right;">Page 129</p> <p>1 whoever, Mary, and speak with them, they didn't just 2 leave. They still had to think about it and still had 3 the process. They still got signed up even -- you 4 know, even if it was down the road and then time to 5 think about it, but they still were being questioned 6 and -- that's what I believe. 7 Q. Was the purpose of -- am I right to think that 8 the purpose of having them visit with the -- well, 9 strike that. 10 So in your view the act of having them go 11 sit with the nurse and hear what the nurse had to say 12 about cataract surgery was a form of pressure brought 13 to bear on them? 14 A. Correct. 15 Q. So we've identified two things now that you think 16 Dr. Chase did to pressure people into cataract 17 surgery. One is to ask them a series of questions 18 about their visual symptoms, right? 19 A. Yes. 20 Q. The other is to have them go see the nurse for 21 further counseling about cataracts; is that right? 22 A. Yes. 23 Q. What else do you think Dr. Chase did to pressure 24 people into cataract surgery? 25 A. Nothing.</p>	<p style="text-align: right;">Page 131</p> <p>1 Q. Can you tell me as best as you can remember 2 exactly what he said to the patients about second 3 opinions? 4 A. That's what he'd say is that he went to school to 5 get a license for -- the only one in Vermont that had 6 a license in doing the surgeries, other people hadn't 7 taken the time to do them, and he fancied that he 8 could see a cataract and that they didn't need a 9 second opinion, that he was going to give them a 10 second opinion, and that was it. 11 Q. Did he say to -- he didn't tell them that he was 12 the only person in town who could perform -- who was 13 licensed to perform cataract surgery? 14 A. The one that took the time -- I don't know what 15 it was that he did, but took the time to sit down and 16 take the test certifying him to do the surgery. 17 Q. So some sort of extra accreditation? 18 A. Yes. 19 Q. Did he tell them that if they got a second 20 opinion, another doctor might disagree as to the 21 necessity of surgery but he felt they would benefit 22 from surgery? 23 A. Yes. 24 Q. Was that kind of the gist of what he was telling 25 them about the second opinion?</p>
<p style="text-align: right;">Page 130</p> <p>1 Q. So -- 2 A. I don't know of anything else. 3 Q. So you don't know of anything other than asking 4 them a series of questions about their visual 5 limitations and having them go see the nurse; is that 6 right? 7 A. Anything else -- I mean -- 8 Q. Anything else that he did to pressure people into 9 cataract surgery. 10 A. No. 11 Q. Do you know what the nurses said to these 12 patients in the nurse's office? 13 A. No. 14 Q. During the course of his exam, if he had 15 diagnosed somebody with cataracts, what did Dr. Chase 16 say to them, if anything, about a second opinion? 17 A. That he didn't need a second opinion, he's going 18 to give him a second opinion. 19 Q. Can you tell me -- you heard -- you heard this a 20 lot of times, right? 21 A. Yes. 22 Q. And it was fairly -- this portion of it, at 23 least, was very much the same for most patients, 24 right? 25 A. Yes.</p>	<p style="text-align: right;">Page 132</p> <p>1 A. Yes. 2 Q. Because he obviously wasn't giving them a second 3 opinion, right? I mean, it was the same doctor in the 4 same room with these patients. 5 MR. WINN: Object to the form. 6 A. Can you change how you're saying it? 7 Q. No time elapsed between -- virtually no time 8 elapsed between him telling them they have cataracts 9 and him saying you want a second opinion, I'll give 10 you a second opinion, correct? 11 A. Correct. 12 Q. It was all in the same conversation? 13 A. Correct. 14 Q. And no extra exam took place in between? 15 A. Correct. 16 Q. We talked a little bit earlier about how you 17 worked in the OR. 18 A. Yes. 19 Q. And remind me, how many months did you work in 20 the OR? 21 A. I don't know exactly. Somewhere around two to 22 three months, maybe. 23 Q. Two or three months at the beginning of your time 24 with Dr. Chase? 25 A. Yes.</p>

<p style="text-align: right;">Page 133</p> <p>1 Q. Why did you cease working in the OR?</p> <p>2 A. Because I did not care to be working with</p> <p>3 Dr. Chase solely in the OR.</p> <p>4 Q. And why was that?</p> <p>5 A. He would get agitated and -- at different times,</p> <p>6 and it would just make me really nervous.</p> <p>7 Q. And when you got nervous, was it making it even</p> <p>8 harder to meet his demands in there?</p> <p>9 A. Yes.</p> <p>10 Q. So it sounds like it was a bad dynamic between</p> <p>11 you guys in the OR.</p> <p>12 A. Absolutely.</p> <p>13 Q. Were there specific complaints he had about your</p> <p>14 performance in the OR?</p> <p>15 A. No. He's never stated them to me.</p> <p>16 Q. Any problems with observing sterile procedures?</p> <p>17 A. No.</p> <p>18 Q. Who worked in the OR in your stead afterwards?</p> <p>19 A. Sandy Miller.</p> <p>20 Q. Did she stay in that position until Dr. Chase</p> <p>21 lost his license?</p> <p>22 A. Yes.</p> <p>23 Q. So she worked well with him in the OR?</p> <p>24 A. She worked well with him in the OR and outside.</p> <p>25 Q. I'm going to give you sort of -- I'm going to ask</p>	<p style="text-align: right;">Page 135</p> <p>1 Q. Susan Lang?</p> <p>2 A. No.</p> <p>3 Q. Margaret McGowan?</p> <p>4 A. No.</p> <p>5 Q. Helena Nordstrom?</p> <p>6 A. Only what is here.</p> <p>7 Q. The only recollection you have of her treatment</p> <p>8 is what you learned by reviewing the chart with Phil</p> <p>9 Ciotti and here today; is that right?</p> <p>10 A. Correct.</p> <p>11 Q. Judith Salatino?</p> <p>12 A. No.</p> <p>13 Q. Donald Olson?</p> <p>14 A. No.</p> <p>15 Q. Joseph Touchette?</p> <p>16 A. No.</p> <p>17 Q. So as to those folks, you can't say one way or</p> <p>18 the other whether, for instance, the patient</p> <p>19 complaints noted in the chart are consistent with what</p> <p>20 those patients actually said to Dr. Chase --</p> <p>21 A. No.</p> <p>22 Q. -- or to the techs?</p> <p>23 A. I don't remember their names and faces. I</p> <p>24 remember the faces, but that's it.</p> <p>25 Q. We've gone through Helena Nordstrom's chart,</p>
<p style="text-align: right;">Page 134</p> <p>1 you a series of questions which may seem a little bit</p> <p>2 unfair, but I just need to know the answers to them.</p> <p>3 There have been 13 or so folks named as complainants</p> <p>4 in the Medical Practice Board proceeding at this</p> <p>5 point. And I just want to ask you if you have any</p> <p>6 independent recollection of any of these patients</p> <p>7 before we look at any charts. Okay?</p> <p>8 Do you have any independent recollection</p> <p>9 of the care given to Carl Andreas?</p> <p>10 A. No.</p> <p>11 Q. William Augood?</p> <p>12 A. No.</p> <p>13 Q. Franklin Cole?</p> <p>14 A. No.</p> <p>15 Q. Jane Corning?</p> <p>16 A. It sounds familiar, but I don't think so.</p> <p>17 Q. So you remember the name, but you don't remember</p> <p>18 any of the details regarding her care?</p> <p>19 A. No.</p> <p>20 Q. Richard Gagnon?</p> <p>21 A. Again, the name, but no.</p> <p>22 Q. Marylen Grigas?</p> <p>23 A. No.</p> <p>24 Q. Janet Kerr, K E R R?</p> <p>25 A. Name, but nothing.</p>	<p style="text-align: right;">Page 136</p> <p>1 which was Exhibit 6, and I believe we determined based</p> <p>2 on the initialing that you did not work on her case,</p> <p>3 right?</p> <p>4 A. Correct.</p> <p>5 Q. We've looked at Exhibit 10, which I'll tell you</p> <p>6 was Margaret McGowan's chart, and you have that in</p> <p>7 front of you now?</p> <p>8 A. Yes.</p> <p>9 Q. You worked on this chart, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Your initial's on the first page; that's</p> <p>12 Page 1131?</p> <p>13 A. Yes.</p> <p>14 Q. And it's on the next page, 1132?</p> <p>15 A. Yes.</p> <p>16 Q. And it's also under CST with BAT?</p> <p>17 A. Yes.</p> <p>18 Q. Glare testing sheet, 1136?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any reason to believe that the</p> <p>21 lifestyle questionnaire filled out by Margaret McGowan</p> <p>22 and identified as Page 1133 reflects anything than</p> <p>23 her -- other than her self-reported visual problems?</p> <p>24 A. No.</p> <p>25 Q. Do you have any reason to believe that the test</p>

<p style="text-align: right;">Page 137</p> <p>1 results recorded on Page 1136 do not reflect her 2 actual test results? 3 A. No. 4 Q. Do you remember anything about this patient other 5 than what's in the chart? 6 A. No. 7 Q. I'm going to hand you what we've marked as Landry 8 Deposition Exhibit 9. The name is crossed out at the 9 top, but this is the chart of a woman by the name of 10 Judith Salatino. 11 MR. MILLER: Joe, can I see the copy I 12 gave you? I may have given you the wrong one. No, I 13 didn't. 14 Q. Did you work on this chart? 15 A. Yes. 16 Q. Are those your initials on the first page, 1517? 17 A. Yes. 18 Q. Are your initials on the second page, 1518? 19 A. I don't have a second page. 20 Q. I'm sorry. Can you look at the -- let's make 21 this the official deposition exhibit. Let's make my 22 copy the official Exhibit 9, and I'll look at it 23 together with you, because it has some double-sided 24 stuff. 25 MR. MILLER: And, Joe, I'll get you a copy</p>	<p style="text-align: right;">Page 139</p> <p>1 removed? 2 A. No. 3 Q. Do you know whose writing this is? 4 A. I believe it's Elaine's. 5 Q. Okay. You performed the tests, the results of 6 which are recorded on Page 1520; is that right? 7 A. Yes. 8 Q. Do you know whether this was pre or post 9 dilation? 10 A. No. 11 Q. Whether it was a first or second test? 12 A. No. 13 Q. I'm looking at the results of the contrast 14 sensitivity test with glare, and there's one line 15 rather than two drawn on the chart, and that is for 16 the right eye, correct? 17 A. Correct. 18 Q. And -- 19 A. Correct. 20 Q. And then under OD it says unable. Do you see 21 that? 22 A. Yes. 23 Q. What does that mean? 24 A. That the person was unable to see the chart with 25 the glare.</p>
<p style="text-align: right;">Page 138</p> <p>1 of this later. 2 MR. WINN: Okay. 3 Q. We confirmed that those are your initials on 4 1517, right? 5 A. Yes. 6 Q. Are those also your initials on Page 1518? 7 A. Yes. 8 Q. And are those also your initials on Page 1520? 9 A. Yes. 10 Q. Okay. Do you recall anything about this patient 11 other than what's in the chart? 12 A. No. 13 Q. So do you have any recollection as to whether or 14 not Ms. Salatino said that she was, independent of 15 what's in the chart, unable to see clearly? 16 A. No. 17 Q. Do you have any recollection as to whether or not 18 she says she has dark visual acuity reading? 19 A. No. 20 Q. Do you have any difficulty -- do you have any 21 independent recollection of whether or not she has 22 dark visual acuity at night due to cataracts? 23 A. No. 24 Q. Do you have any independent recollection of 25 whether or not she said she wants her cataracts</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. So even -- they couldn't even read the very first 2 bubble; is that right? 3 A. That's right. 4 Q. And when they couldn't even read the first set of 5 circles, you wrote unable, because you couldn't record 6 a zero on the chart? 7 A. Yes. That's correct. 8 Q. So this Page 1520 reflects that this patient had 9 a CST with glare test result with a Snellen equivalent 10 of 20/100 in the right eye and then in the left eye 11 they scored a zero? 12 A. Correct. 13 Q. As to any of the patients we've just talked 14 about, either the names that we went through without 15 the charts or the two charts we just talked about, do 16 you know whether Dr. Chase was falsifying tests? 17 A. No. 18 Q. Do you know whether he was misrecording any of 19 the data that came out of the tests? 20 A. No. 21 Q. Do you know whether these patients did or did not 22 have cataracts? 23 A. No. 24 Q. Do you know whether these patients were or were 25 not proper candidates for cataract surgery?</p>

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1 A. No.
 2 MR. MILLER: I'm in the home stretch here.
 3 Let's go off the record for a second.
 4 (A short break was taken.)
 5 BY MR. MILLER:
 6 Q. I want to circle back to just a couple things
 7 that we've talked about already before we move on.
 8 First I want to go back to the Post-its.
 9 A. Yes.
 10 Q. Were -- at the time you arrived at Dr. Chase's
 11 office in August of 2002, were the techs utilizing
 12 Post-its for -- to record Snellen acuity in the first
 13 instance for patients over 45?
 14 A. The age changed, but I don't know what it was,
 15 but yes.
 16 Q. In what way did the age change?
 17 A. I believe they got younger.
 18 Q. How do you know that?
 19 A. Because it was -- it changed when I got there,
 20 but I think it was 5- -- I -- it's speculation. I
 21 don't know.
 22 Q. Who told you what that age cutoff was?
 23 A. One of the people training me.
 24 Q. Do you know who?
 25 A. I believe it was Melissa.

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1 Q. Okay. Anybody else?
 2 A. Elaine, most likely.
 3 Q. Do you remember, or are you just guessing when
 4 you say Elaine?
 5 A. Guessing.
 6 Q. Okay. What about with Melissa? Do you remember
 7 her telling you that, or are you just guessing?
 8 A. Guessing.
 9 Q. Do you have any independent -- do you have any
 10 actual recollection of somebody telling you the cutoff
 11 was --
 12 A. Yes. Because we would have to be updated and let
 13 us know, and I believe it was Elaine that let us know
 14 when things changed.
 15 Q. Was Elaine sort of in charge of standardization
 16 across testing and recording?
 17 A. She recorded well.
 18 Q. She had been with Dr. Chase a long time, right?
 19 A. Yes.
 20 Q. So was she sort of looked to as the chief scribe
 21 and recorder?
 22 A. Yes.
 23 Q. What reason were you given for using the
 24 Post-its?
 25 A. I wasn't.

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1 Q. Did anybody ever tell you why the Post-its were
 2 used?
 3 A. No. I don't believe so.
 4 Q. Dr. Chase never told you to use the Post-its,
 5 right?
 6 A. Right.
 7 Q. Did you come to learn why the Post-its were being
 8 used or form an opinion as to why the Post-its were
 9 being used?
 10 A. Formed an opinion, yes.
 11 Q. What is that opinion?
 12 A. It's so -- my opinion was that it was so that he
 13 could change the record -- well, put down where he
 14 wanted to his results of the -- our results of the
 15 testing so that it would appear that a patient needed
 16 cataract surgery.
 17 Q. And by -- I want to make sure I understand what
 18 you mean by that. You didn't think that he was
 19 actually changing the Snellen results --
 20 A. No.
 21 Q. -- that you got? And you believe that those were
 22 accurately recorded on the top of the sheet that also
 23 had glare and contrast sensitivity testing?
 24 A. Correct.
 25 Q. But you believe that Dr. Chase had you use

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1 Post-its in the first instance so that he could record
 2 the Snellen on the contrast sensitivity sheet rather
 3 than on the first page of the medical records?
 4 A. Correct.
 5 Q. Any other reason why you thought the Post-its
 6 were being used?
 7 A. No.
 8 Q. Can I get you to look at Exhibit 6 again, which
 9 is Helena Nordstrom's medical record. Yeah. There.
 10 In looking at the first page, which is
 11 marked MR1315, we talked earlier about the information
 12 that's recorded in the left-hand column on the second
 13 half of the page. And we talked about information
 14 under the Nidek -- the word Nidek, which has a
 15 refraction that's circled along with the word cyclo.
 16 You see that?
 17 A. Yes.
 18 Q. And you said that led you to believe that that
 19 measurement was taken while the patient was dilated;
 20 is that right?
 21 A. Correct.
 22 Q. The next set of numbers under manifest
 23 refraction, do you see those?
 24 A. Yes.
 25 Q. Were those numbers taken with the patient's eyes

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<p style="text-align: right;">Page 145</p> <p>1 dilated or undilated?</p> <p>2 A. I don't know. I believe that it's dilated,</p> <p>3 because they did a cyclo Nidek, but I don't know.</p> <p>4 Q. Okay. And then on that same set of numbers, you</p> <p>5 see they're surrounded by square brackets?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what those brackets mean?</p> <p>8 A. Brackets I believe mean that they have a</p> <p>9 refraction, that they had a refraction completed.</p> <p>10 Q. Anything else? Let me ask --</p> <p>11 A. Oh. Yes. It means they were wearing their</p> <p>12 glasses, I believe. I don't remember. I don't recall</p> <p>13 that. It's been a while.</p> <p>14 Q. Okay. I'm going to ask you to take out</p> <p>15 Exhibit 9, which was Judith Salatino's chart. And</p> <p>16 flip to the last page, which is numbered 1520. I just</p> <p>17 want to make sure that I didn't misspeak in looking at</p> <p>18 this chart.</p> <p>19 In the contrast sensitivity chart, when</p> <p>20 you write OD unable, does that mean that her -- she</p> <p>21 was unable to perform with her right eye or that she</p> <p>22 was unable to perform with her left eye?</p> <p>23 A. Right eye.</p> <p>24 Q. So the result that we do see on the chart is that</p> <p>25 for her left eye?</p>	<p style="text-align: right;">Page 147</p> <p>1 Q. So it led you to believe that Dr. DeVita had had</p> <p>2 a hand in putting this together?</p> <p>3 A. Yes.</p> <p>4 Q. And at least prior to patient complaints, he</p> <p>5 thought that it was a good form?</p> <p>6 A. He knew that it was a little bit confusing, but</p> <p>7 he thought that it was pretty legible for patients.</p> <p>8 Q. We went through a list of patients earlier, and I</p> <p>9 asked you if you had any independent recollection of</p> <p>10 the treatment they received.</p> <p>11 A. Right.</p> <p>12 Q. Do you have, sitting here today, independent</p> <p>13 recollection of the treatment received by any</p> <p>14 particular patient that you can identify?</p> <p>15 A. I can't identify their name. I can only identify</p> <p>16 their face.</p> <p>17 Q. How many people can you identify by face?</p> <p>18 A. Quite a few. I don't know.</p> <p>19 Q. Are there people that you can -- that you would</p> <p>20 be able to identify by face who you believe received</p> <p>21 improper -- improper care by Dr. Chase?</p> <p>22 A. Yes.</p> <p>23 Q. Describe to me the patients that you can remember</p> <p>24 in that regard.</p> <p>25 A. Well, there's one in particular that had just had</p>
<p style="text-align: right;">Page 146</p> <p>1 A. Yes.</p> <p>2 Q. We also looked earlier at the lifestyle</p> <p>3 questionnaires. Do you remember those?</p> <p>4 A. Yes.</p> <p>5 Q. Can you find it among the exhibits that you have?</p> <p>6 A. Oh, okay. Yeah, I would be able to. I just</p> <p>7 didn't know if you wanted me to.</p> <p>8 Q. Keep going. There we go. Exhibit 8?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know what the origin of this chart is;</p> <p>11 that is, whether it was developed by Dr. Chase's</p> <p>12 practice or whether it came from an outside source?</p> <p>13 A. This?</p> <p>14 Q. Yes.</p> <p>15 A. I believe it was developed by Dr. DeVita and</p> <p>16 Mrs. Chase, but I think they went off from another</p> <p>17 form. They kind of referred to a different form when</p> <p>18 they did this.</p> <p>19 Q. What's the basis of your knowledge in that</p> <p>20 regard?</p> <p>21 A. Because Dr. Chase -- I mean Dr. DeVita, when</p> <p>22 brought this to his attention that patients were</p> <p>23 confused, he said that he had reviewed it and that he</p> <p>24 had been -- that he had reviewed it before and that he</p> <p>25 would review it again.</p>	<p style="text-align: right;">Page 148</p> <p>1 some kind of surgery involving her brain or something,</p> <p>2 and she came in complaining of headaches and was told</p> <p>3 that she had cataract surgery -- I mean needed</p> <p>4 cataract surgery. But I don't recollect -- I don't</p> <p>5 recall her name.</p> <p>6 Q. Do you know when that was?</p> <p>7 A. Sometime when I was there.</p> <p>8 Q. Okay. Do you have any reason to believe she</p> <p>9 didn't have cataracts and was not an appropriate</p> <p>10 candidate for surgery?</p> <p>11 A. Her doctor complained to Dr. Chase -- her primary</p> <p>12 care doctor complained to Dr. Chase telling Dr. Chase</p> <p>13 that it was not appropriate and that they didn't need</p> <p>14 it and that she had a second opinion, as well.</p> <p>15 Q. How do you know what transpired between her other</p> <p>16 doctor and the second opinion doctor and Dr. Chase?</p> <p>17 A. Because it was spoke about amongst the other</p> <p>18 technicians.</p> <p>19 Q. Did you hear about this directly from either the</p> <p>20 patient or the patient's other doctors or just from</p> <p>21 other technicians?</p> <p>22 A. Other technicians.</p> <p>23 Q. Is it a patient whose treatment you were involved</p> <p>24 in?</p> <p>25 A. I don't believe so.</p>

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1 Q. Okay.
 2 A. Just can recall her.
 3 Q. Who else?
 4 A. Now I'm -- just let me -- so that I can clarify,
 5 I'm supposed to be only identifying the patients that
 6 I felt didn't need cataract surgery?
 7 Q. Yeah. Patients who you felt were treated
 8 improperly or unethically by Dr. Chase. Not every
 9 patient that you remember.
 10 A. Right. I was like, Oh.
 11 Q. We'll be here a while, right?
 12 A. Yeah. I don't know. There's another patient
 13 that -- that was told that he was terminally ill, and
 14 he only had -- was told that he had a couple weeks
 15 left to live, and I felt that his standard -- his --
 16 his life wasn't that great. He lived in a nursing
 17 home, and he knew he was dying, and he had cataract
 18 surgery, and I just felt that that wasn't appropriate.
 19 Q. The reason you felt that wasn't appropriate was
 20 not -- just so I understand, was not because you feel
 21 that he didn't have cataracts or wasn't medically a
 22 proper candidate for surgery, but you just felt that
 23 he shouldn't be spending his final weeks dealing with
 24 surgery?
 25 A. I don't know if he had cataracts. I just

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1 Q. Okay. Do you have any recollection other than
 2 what's contained in the chart regarding her care?
 3 A. No. I don't even remember her face, so I don't
 4 think she was -- I don't know.
 5 Q. So you can't say one way or another whether she
 6 received proper or improper medical treatment at the
 7 hands of Dr. Chase?
 8 A. No.
 9 Q. When you were contacted by Ms. Brundage's
 10 attorney about providing an affidavit in that
 11 matter -- you remember that?
 12 A. Yes.
 13 Q. And you were contacted directly by
 14 Ms. Kirkpatrick, correct?
 15 A. I believe so, yes.
 16 Q. Did she ask you whether or not you felt
 17 Mrs. Chase knew or was involved in questionable
 18 decisions about cataract surgery?
 19 A. Yes.
 20 MR. WINN: I -- it just seems to me this
 21 line of questioning is irrelevant to the purpose of
 22 this deposition.
 23 MR. MILLER: This is --
 24 MR. WINN: Just note -- just to note my
 25 objection.

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1 honestly feel that there's a time when patients
 2 shouldn't undergo through things like that.
 3 Q. Okay. I guess -- I think I understand what
 4 you're saying, but let me make sure I'm clear. The
 5 reason you feel he was not treated properly was not
 6 because you know anything one way or the other about
 7 whether he had cataracts or visually significant
 8 cataracts; is that right?
 9 A. Correct.
 10 Q. It was because he was at a stage in his life
 11 where any surgery seemed silly to you?
 12 A. Risky and unnecessary.
 13 Q. Who else?
 14 A. Patients -- I -- I don't know. I can't recall
 15 that many off the top of my head like that. I'm not
 16 good with this bringing up examples like that.
 17 Q. I realize it's hard, but I do want you to just do
 18 your best to remember anybody else who you think.
 19 A. I'm not sure at this time.
 20 Q. You can't remember anybody else at this time?
 21 A. Not at this time.
 22 Q. Did you have any role in providing care to
 23 Ms. Brundage, the plaintiff who -- who contacted you
 24 in connection with her suit against Dr. Chase?
 25 A. I believe my name was on her chart.

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1 Q. What did you say to her in response to those
 2 questions?
 3 A. Just what's wrote down, that I didn't feel that
 4 she was there much and I did not know what her role
 5 other than signing paychecks and being there to change
 6 documents for Dr. Chase around and stuff like that.
 7 Q. I'm going to give you what we have marked as
 8 Landry Deposition Exhibit 11. Why don't you take a
 9 quick look through this and just tell me if you
 10 recognize what this packet of documents is.
 11 A. Yes.
 12 Q. Do you recognize this as materials that you
 13 either submitted or signed in connection with being
 14 hired by Dr. Chase's practice?
 15 A. Yes.
 16 Q. On the first page of Exhibit 11 it says that you
 17 applied to his office on July 5th, 2002; is that
 18 right?
 19 A. Yes.
 20 Q. And I think we established earlier that you
 21 started working for him in August of 2002?
 22 A. Yes.
 23 Q. Halfway down this page it says -- you've checked
 24 the box that says you weren't currently employed at
 25 the time you applied to his office; is that right?

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1 A. Yes.
 2 Q. Why weren't you employed at that time?
 3 A. Because the place that I had worked for had to do
 4 layoffs.
 5 Q. Where was that?
 6 A. VOAC, Vermont Occupational & Acute Care.
 7 Q. What was the nature of the layoffs?
 8 A. The nature of the layoffs was the business was
 9 not doing as well as they needed it to be and they
 10 needed to lay a couple people off in order to hire one
 11 person to do the role that myself and possibly other
 12 people had done.
 13 Q. How many people, approximately, did VOAC employ?
 14 Just give me a sense of how big the organization was.
 15 A. Six. It was very small. Seven.
 16 Q. And of those six or seven, two people were laid
 17 off?
 18 A. Yeah.
 19 Q. Okay.
 20 A. Maybe a few more in the future, but at that time
 21 two.
 22 Q. And you were one of those two?
 23 A. Yes.
 24 Q. And they replaced the two of you with a single
 25 worker?

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1 Q. Did you take any classes that were health
 2 services-related classes there?
 3 A. No.
 4 Q. Then it says you spent a year at Vermont
 5 Technical College in nursing, right?
 6 A. Correct.
 7 Q. Tell me -- and is that -- was that an LPN
 8 program?
 9 A. Yes.
 10 Q. And did you complete a full year of studies
 11 there?
 12 A. Yes.
 13 Q. Tell me the areas or class -- of study or classes
 14 that you took while you were there.
 15 A. Anatomy and physiology; nursing studies; surgical
 16 techniques in nursing; I did the clinicals.
 17 Q. What does that mean, the clinicals?
 18 A. Where I had to be in the hospital and assist with
 19 patient care. Psychology. Pretty much all that was
 20 required.
 21 Q. What year were you there?
 22 A. '96, '97, somewhere in there.
 23 Q. Did you have a particular instructor or faculty
 24 member who was sort of in charge of your course work
 25 there?

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1 A. Yes.
 2 Q. Who had not worked there before?
 3 A. Correct. She was a -- a nurse practitioner, I
 4 believe.
 5 Q. Second page says you went to Burlington High
 6 School, right?
 7 A. Correct.
 8 Q. You graduated from there?
 9 A. Yes.
 10 Q. And then you spent a year at CCV in library
 11 studies?
 12 A. Liberal.
 13 Q. I'm sorry. Liberal studies. What did you study
 14 at CCV?
 15 A. A little bit of everything. I just kind of took
 16 courses as I wanted to and don't really -- that's why
 17 it's liberal. Just took what I wanted.
 18 Q. That's what you meant by liberal?
 19 A. Yes.
 20 Q. Were you working at the time, or were you just
 21 taking classes?
 22 A. Working and kind of -- both. Sometimes -- it was
 23 when I had my daughter, so --
 24 Q. Working part time and taking classes part time?
 25 A. At times, yes.

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1 A. No.
 2 Q. You opted to stop that program before getting a
 3 certificate or degree?
 4 A. Correct.
 5 Q. Why did you do that?
 6 A. I had my daughter. It was really hard to
 7 continue. The last part of the program was going to
 8 be even more intensive. I wasn't really even sure if
 9 I even liked it. Opted to go back because you could
 10 stop where you were and continue the next year, and I
 11 just decided not to.
 12 Q. And you haven't gone back since then?
 13 A. Correct.
 14 Q. I probably covered this before, but did you have
 15 any training in eye care, per se, during that program?
 16 A. I said no before, but I'm -- obviously I did.
 17 Q. Oh. And you're referring to later on the second
 18 page of Exhibit 11 where it says you'd been trained to
 19 do what?
 20 A. Titmus. It was -- I thought -- when I was
 21 writing this, I thought I knew a lot, but I --
 22 Q. What do you mean by that?
 23 A. That I felt that it was a great thing to be
 24 Snellen tested and be able to do this one machine.
 25 And it was just a very small -- and it was just

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1 somebody in the office that showed me how to do it.
 2 Q. Okay. So it wasn't a particular program or
 3 course of study in these testing procedures?
 4 A. No.
 5 Q. It was some -- one instructor showed you how to
 6 do it as part of your overall education?
 7 A. Correct.
 8 Q. What's Titmus testing?
 9 A. It's -- it's a name of a machine, and it's where
 10 you can -- you have the people look down, like, this
 11 tunnel of a machine and they can -- kind of does a
 12 little bit of everything. Tests for their -- their
 13 visual acuity and I believe it did color testing and
 14 it did all of the testing in one little thing, and it
 15 was just a screening.
 16 Q. Okay. Other than the things that are listed here
 17 on Page 2 of Exhibit 11, Titmus testing, Snellen
 18 vision, removal of foreign object, and applying strips
 19 for chemical burns, do you have any other eye-related
 20 training?
 21 A. Not at all.
 22 Q. Not formal or informal?
 23 A. (Witness shakes head).
 24 Q. Is that a no?
 25 A. Sorry. No.

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1 Q. The final two pages of Exhibit 11 are your resume
 2 that you gave to Dr. Chase's practice. Do you
 3 recognize this?
 4 A. Yes.
 5 Q. In work history you have that you worked at
 6 Vermont Occupational & Acute Care. Is that -- that's
 7 the place you were laid off from?
 8 A. Yes.
 9 Q. What were your main functions there?
 10 A. I did the front desk secretarial stuff to help
 11 out. That was -- they were currently going to be
 12 hiring somebody but didn't. They just had me doing
 13 that. Putting patients in the rooms, doing histories,
 14 doing -- I did a little bit of everything. Filing
 15 charts, doing the hearing test, just the screenings,
 16 and the vision screenings.
 17 Q. Who was your boss there?
 18 A. It was Fred, and --
 19 Q. What was Fred's last name?
 20 A. I'm horrible with names. I'm absolutely
 21 horrible.
 22 Q. Is Fred still there, to your knowledge?
 23 A. He was the owner, and Nancy Cousino, which I can
 24 remember her name, was also the other owner, and they
 25 no longer are in business together.

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1 Q. Does Vermont Occupational & Acute Care still
 2 exist?
 3 A. No.
 4 Q. Do you know what either Fred or Ms. Cousino are
 5 doing these days?
 6 A. I know what Ms. Cousino is doing. I don't know
 7 because I haven't been there lately, but there's a
 8 different name on the building, and I don't know if
 9 it's -- what it is, but Miss Cousino is work -- she
 10 owns a place on Roosevelt Highway called -- I knew it
 11 as VOAC, but give me a second and I'll tell you. I'll
 12 tell you in a moment.
 13 Q. Okay. Is it another --
 14 A. It's a new name.
 15 Q. -- occupational and acute --
 16 A. It's for physical therapy.
 17 Q. Is that what VOAC did, really, was physical
 18 therapy?
 19 A. Both. They did -- had patients that came in and
 20 they would examine -- the doctor would examine and see
 21 if the patient actually needed supplemental pay for
 22 their injuries or if they even deserved -- well, or if
 23 they even were going to get anything for their
 24 injuries during work time.
 25 Q. So determining their eligibility --

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1 A. Eligibility.
 2 Q. -- for Workers' Compensation?
 3 A. Absolutely.
 4 Q. And then -- and then secondarily providing
 5 occupational therapy to them?
 6 A. Yes. Trying to get them over. And then the last
 7 part of it was when I was -- they were just barely
 8 trying to implement was acute care.
 9 Q. Do -- were you told why you were laid off as
 10 opposed to other folks?
 11 A. Yes.
 12 Q. Why did they say you were laid off?
 13 A. Because I was not -- I did not have a larger
 14 education, so I could not diagnose patients as well as
 15 go out into the field and give people shots and
 16 everything else. So I had to be in order for them to
 17 afford somebody else to come in.
 18 Q. Did they give you any reason related to your job
 19 performance?
 20 A. No. Not at all. They said that I could go back
 21 and work there if I wanted as soon as I -- if there
 22 was an opening and if I wanted to when they could
 23 allow it.
 24 Q. Next thing listed on your resume is a medical
 25 assistant at Fletcher Allen Health Care in Burlington

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1 from '99 to 2001.
 2 A. Correct.
 3 Q. What did you do there?
 4 A. Well, the medical assistant one was a
 5 dermatology.
 6 Q. Okay.
 7 A. I assisted the doctors, especially Dr. Krusinski,
 8 in punch biopsies, shave biopsies; helped him in
 9 different surgeries; prepped charts; called in
 10 prescriptions. Did basically anything that a medical
 11 assistant would do.
 12 Q. How many other medical assistants did he employ?
 13 A. Well, it was Fletcher Allen.
 14 Q. How many other medical assistants worked for --
 15 primarily for him?
 16 A. I think it was ten total. But not just for him.
 17 Other doctors, too.
 18 Q. Were you working for other doctors, as well?
 19 A. Not necessarily. I worked well with
 20 Dr. Krusinski and stayed with him most of the time.
 21 Q. Were there other doctors up there who you didn't
 22 work well with and therefore didn't work much with
 23 them?
 24 A. No.
 25 Q. Why did your employment with Fletcher Allen as a

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1 Q. Can you tell me who they were?
 2 A. Well, there was Elizabeth Bevins.
 3 Q. Can you give me last name -- oh, Bevins is her
 4 last name?
 5 A. Yes.
 6 Q. Okay.
 7 A. But I don't know why I want to --
 8 Q. Who else?
 9 A. There was Susan Hall; there was Nancy Greene,
 10 with an E; there was -- I don't know her last name.
 11 Q. What was her first name?
 12 A. Margaret. She was an LPN. I can't think of
 13 everybody at the top of my head. There were some new
 14 ones when I started, so -- I mean after I started.
 15 Q. Other than the comments that you just referred to
 16 about running up the hall saying these things, were
 17 there other bases for the harassment claim that you
 18 and these other folks brought?
 19 A. Yes. She'd smack me on the hand and tell me to
 20 sit down and turn around and don't do anything, and
 21 she treated us like we were 12, you know, or younger.
 22 Q. And what other -- what other thing -- ways did
 23 she treat you poorly other than smacking you on the
 24 hand?
 25 A. It's been so long.

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1 medical assistant end?
 2 A. Well, the -- I was ending, and the nurse
 3 prac- -- nurse -- I think it was a nurse practitioner
 4 and I did not get along, and it just -- I decided that
 5 it wasn't the -- I did not want to continue with
 6 Fletcher Allen, and we had a meeting at human
 7 resources, and we ended it, so --
 8 Q. Was the nurse Ruth LeBlanc?
 9 A. Yes.
 10 Q. Tell me about what caused the problem with your
 11 relationship with her.
 12 A. I brought her up on harassment charges, and it
 13 started there.
 14 Q. What sort of harassment did you accuse her of?
 15 A. Yelling up and down the halls that somebody's
 16 nipples were showing.
 17 Q. Was she referring to you or to someone else?
 18 A. Me at times.
 19 Q. Others at times?
 20 A. Others at times.
 21 Q. And you filed a formal harassment claim with
 22 Fletcher Allen?
 23 A. With other people, as well.
 24 Q. How many other people?
 25 A. The -- all the technicians there.

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1 Q. Tell me what you can remember.
 2 A. She -- it was mostly verbal, just things. That's
 3 it.
 4 Q. Would she yell at you guys when she thought you
 5 weren't doing your jobs well?
 6 A. No. Not really, no.
 7 Q. Prior to bringing the formal harassment claim,
 8 had you -- you said it started there, but had you had
 9 other problems with her before?
 10 A. No.
 11 Q. What happened -- tell me what happened after you
 12 brought the formal harassment claim.
 13 A. She had to go to a class on how to treat your --
 14 your staff, and she went back there and seemed fine
 15 for the longest time, and then she just started
 16 everything all over again.
 17 Q. Going back to the first -- to the harassment
 18 claim, was she demoted as a result of that claim or
 19 just had to go to this class?
 20 A. Just had to go to the class, but she was later
 21 demoted.
 22 Q. Okay. When -- was she demoted later when things
 23 got bad with you guys again?
 24 A. No.
 25 Q. Okay. You said things got bad again. What

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1 happened later?
 2 A. She started saying that I was doing things. She
 3 started trying to say that I wasn't doing the workload
 4 or whatever, and we'd go down to human resources, I'd
 5 prove to them that I was, and then we'd go back, and
 6 it was just a vicious cycle, and then I decided to get
 7 done, and then I believe -- I believe I was actually
 8 terminated, but only on the lines of Ruth and I
 9 basically -- she won. I mean, she finally said that I
 10 left my computer on and somebody used it for something
 11 that they weren't supposed to use it for, and I
 12 couldn't prove it, so -- at that point.
 13 Q. Was that the ultimate reason for your
 14 termination, as you understand it, was the computer
 15 incident?
 16 A. I believe so, but I don't know if I was actually
 17 terminated or not, because I had already -- I had said
 18 before that that I had not -- no longer wanted to work
 19 there and I had to quit, but I think it still
 20 ultimately means the same thing.
 21 Q. What other things did she accuse you of doing to
 22 human resources?
 23 A. Well, the workload.
 24 Q. Um-hum. What else?
 25 A. But that -- maybe -- no. That was it, really. I

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1 mean, it was just little petty things like that.
 2 Q. Did it happen on multiple occasions, though?
 3 A. No. Twice, maybe -- well, twice.
 4 Q. Was she ultimately demoted from her position as
 5 manager at Fletcher Allen?
 6 A. Yes. Because they found her out to be doing --
 7 looking things up on other people's computer screens,
 8 you know, looking up her records or something on
 9 different people's screens, and she was doing laser
 10 surgery on people that she wasn't supposed to, because
 11 she wasn't a licensed doctor, so she couldn't do that,
 12 and she was doing laser procedures on her friends and
 13 other co-workers, and so now I believe she works in a
 14 desk. I don't -- desk job. Not supervising.
 15 Q. Did her demotion have anything to do with the
 16 complaints that you had lodged against her?
 17 A. I doubt it. I still go up there and talk to
 18 everybody, but I don't know.
 19 Q. Had you made complaints to human resources about
 20 those things that you think she was ultimately demoted
 21 for?
 22 A. No. It was just found -- I think they were still
 23 investigating when they let me go.
 24 Q. Before that your resume says you were an
 25 ambulatory support assistant, also at Fletcher Allen?

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1 A. Correct.
 2 Q. What was that?
 3 A. That was just a front desk, answer telephones,
 4 collect charts, prep charts, that kind of thing. And
 5 I was trying to get some education through the work,
 6 and that's why I went to medical assistant. But it's
 7 still at Fletcher Allen. All that was at Fletcher
 8 Allen.
 9 Q. So you sort of graduated from ambulatory support
 10 assistant to medical assistant?
 11 A. Correct.
 12 Q. Who was your supervisor when you were an
 13 ambulatory support assistant?
 14 A. Nancy -- I'm not sure of Nancy's last name. And
 15 there was an LPN there, too, but --
 16 Q. Who was the LPN?
 17 A. I can see her. I don't know her name.
 18 Q. Do you know if the LPN and your supervisor still
 19 work up there?
 20 A. The LPN does. The supervisor does not.
 21 Q. Before that it says you were a unit secretary?
 22 A. Yes.
 23 Q. Also at Fletcher Allen?
 24 A. Yes.
 25 Q. What did that involve?

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1 A. It involved being in the OR out in external
 2 control and taking phone calls, putting stuff into the
 3 Orsos system, collecting data for the billing person,
 4 putting patients back to speak with the doctors about
 5 their surgeries, and holding on to pagers. Simple.
 6 Q. You said a word I didn't understand before.
 7 Putting information into the what system?
 8 A. Orsos system. It's just a computer system for
 9 Fletcher Allen.
 10 Q. How do you spell that?
 11 A. O R S O S.
 12 Q. I take it that your roles as unit secretary and
 13 ambulatory support assistant didn't involve the
 14 provision of medical care to patients?
 15 A. No.
 16 Q. Or medical testing?
 17 A. No.
 18 Q. And certainly no ophthalmological or eye care
 19 experience?
 20 A. Correct.
 21 Q. Staying with your resume on Exhibit 11 and going
 22 down under licenses and certificates, can you just
 23 explain to me briefly what each of these licenses or
 24 certificates is and what you had to do to get them and
 25 who gave you the license or certificate?

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1 A. The hearing conservationalist is -- was done at
 2 Harvard, and I had to go there for -- I was there on
 3 9/11, and I had to go there for, I believe, three days
 4 and talk -- yes, and talk to them -- I mean have them
 5 show me how to use booths and all the equipment to do
 6 the screenings of hearing tests.
 7 Q. What sort of -- explain to me very briefly what
 8 those tests are.
 9 A. Well, it's to place people in a booth and have --
 10 be able to tell if the room is adequate for the
 11 hearing test or if, you know -- if everything's up to
 12 par and if you have to do the testing -- you know,
 13 when you do the testing, make sure that it's proper.
 14 Q. Is this testing the sort of thing where I've
 15 taken where you sit in a booth and you hear noises and
 16 you have to indicate when you hear them and in which
 17 ear?
 18 A. Yes. Yes.
 19 Q. The Titmus and Snellen training, we've covered
 20 that, right?
 21 A. Yes.
 22 Q. Now, here I notice -- do you know so we can find
 23 this out later, here we have titumus, T I T U M U S.
 24 and on the second page you have it as T I T A M U S.
 25 Do you know which of those is correct?

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1 Q. So as an LNA, you have to have a certain number
 2 of hours of continuing education, and ophthalmology
 3 doesn't count towards that?
 4 A. No. Right. You have to work in the field as an
 5 LNA, and ophthalmology does not work.
 6 Q. Top of the next column says you were an Accutane
 7 pregnancy prevention counselor.
 8 A. Correct.
 9 Q. Where did you do that?
 10 A. At dermatology. I went to California for two
 11 days to learn how -- what the -- what Accutane can do
 12 to a woman and why they should prevent pregnancy.
 13 Q. And that allowed you to perform your role as a
 14 medical assistant in the dermatology department?
 15 A. Yes.
 16 Q. Anything eye care related about that training?
 17 A. No.
 18 Q. Next is UVB and UVA phototherapy certificate.
 19 What's that?
 20 A. It's -- it's for UV rays for people with
 21 psoriasis or eczema. Mostly psoriasis. But it's
 22 to -- I had to be trained also in California, and they
 23 sent you away so that when you came back you would be
 24 able to properly make sure the person wasn't burned or
 25 know the treatments and how to provide the adequate

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1 A. I believe it's A, but I'm not sure.
 2 Q. Okay. Below that you have licensed nursing
 3 assistant.
 4 A. Yes.
 5 Q. Tell me what -- what that means.
 6 A. I went to the Professional Nurses Association and
 7 took -- I believe it was a three- or four-month course
 8 on being a nursing assistant and got licensed by the
 9 state of Vermont.
 10 Q. Was the school in Vermont, as well?
 11 A. Yes. It was just at the Professional Nurses
 12 Association in Winooski.
 13 Q. Was there a supervisor of your studies there
 14 whose name you remember?
 15 A. No.
 16 Q. How about names of any instructors you had there?
 17 A. No.
 18 Q. Did you have any eye care-related training in
 19 connection with that certification?
 20 A. No.
 21 Q. Has that now expired?
 22 A. Might have, yes. I believe it did.
 23 Q. Did you bother to renew it?
 24 A. No. Because I was doing ophthalmology, and
 25 you -- it doesn't count for your hours as an LNA.

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1 care for psoriasis patients.
 2 Q. Anything eye care related about that?
 3 A. Only that they had to wear goggles.
 4 Q. Okay. Did any of this formal training teach you
 5 to distinguish between benign and non-benign cysts or
 6 tumors?
 7 A. Dr. Krusinski over time would show -- you know,
 8 be like, This is a basal cell carcinoma or a squamous
 9 cell carcinoma, and he would just -- you know, he'd
 10 know, but always sent it away to the lab.
 11 Q. In order to determine that, though, he had to --
 12 he examined the cyst or mole?
 13 A. Absolutely.
 14 Q. Very closely, right?
 15 A. That wasn't my role to distinguish.
 16 Q. The last thing you have is CPR/first aid. What
 17 was that?
 18 A. It's just CPR training and first aid training,
 19 learn that many years because I was in child care and
 20 continued all the way up through with having to have
 21 it for medical -- to work in the medical field.
 22 Q. Nothing eye care related about that?
 23 A. No.
 24 Q. Anything else in your background or experience
 25 before coming to work for Dr. Chase that gave you

43 (Pages 169 to 172)

<p style="text-align: right;">Page 173</p> <p>1 training in ophthalmology or eye care more generally?</p> <p>2 A. No.</p> <p>3 Fred Frey is his name.</p> <p>4 Q. Fred Frey is the name of the person we were</p> <p>5 talking about before?</p> <p>6 A. Yup.</p> <p>7 Q. He is at VOAC, right?</p> <p>8 A. He was.</p> <p>9 Q. Was.</p> <p>10 A. He was the owner.</p> <p>11 Q. And you don't know where he is now?</p> <p>12 A. No.</p> <p>13 Q. I'm going to talk a little bit about your</p> <p>14 relationship with Dr. Chase. I think we've</p> <p>15 established that you had a poor relationship with him.</p> <p>16 Would you say that?</p> <p>17 A. Yes.</p> <p>18 Q. You were unhappy there, right?</p> <p>19 A. Correct.</p> <p>20 Q. You didn't like the way he treated his staff,</p> <p>21 including you?</p> <p>22 A. Correct.</p> <p>23 Q. You said he was a nasty person to work for?</p> <p>24 A. Correct.</p> <p>25 Q. You said he said that you were unemployable and</p>	<p style="text-align: right;">Page 175</p> <p>1 other people's signature, and that was basically the</p> <p>2 gist of what -- he would think that I was doing a lot</p> <p>3 of things wrong when I wasn't.</p> <p>4 Q. So you think he thought you were mischarting</p> <p>5 things when in fact it was someone else who was</p> <p>6 mischarting things?</p> <p>7 A. When in fact if you look at three different</p> <p>8 people that he's getting and he's blaming one thing on</p> <p>9 one person, sure. It looks like you're doing worse</p> <p>10 than you are.</p> <p>11 Q. In what way -- anything else he said that you did</p> <p>12 that you didn't do? Anything in particular?</p> <p>13 A. I'm not sure.</p> <p>14 Q. Can't remember?</p> <p>15 A. Can't remember.</p> <p>16 Q. In what way did he pick on -- what things did he</p> <p>17 pick on you for that he didn't pick on others for?</p> <p>18 A. As I said before, it was just like if he'd come</p> <p>19 out of the room and he'd be frustrated about</p> <p>20 something, he would yell at me about it or -- not</p> <p>21 yell. Excuse me. Talk to me very aggressively about</p> <p>22 it, and then if somebody else did the same exact</p> <p>23 thing, it would not be brought to their attention.</p> <p>24 Q. What -- give me --</p> <p>25 A. They would know that they forgot -- they forgot</p>
<p style="text-align: right;">Page 174</p> <p>1 asked why you couldn't just be like everybody else?</p> <p>2 A. Normal.</p> <p>3 Q. Why you couldn't be normal.</p> <p>4 A. Correct.</p> <p>5 Q. He in turn, I guess, felt that you weren't doing</p> <p>6 your job very well?</p> <p>7 A. Never said that.</p> <p>8 MR. WINN: Object to the form.</p> <p>9 Q. He never told you that he was unhappy with your</p> <p>10 work?</p> <p>11 A. No.</p> <p>12 Q. How did his unhappiness -- how did his</p> <p>13 displeasure with you manifest itself?</p> <p>14 A. Treated me different than everybody else.</p> <p>15 Q. In what way?</p> <p>16 A. Basically picked on everything that I did.</p> <p>17 Q. And when you say -- I just want to understand.</p> <p>18 When you say "picked on," what do you mean by that?</p> <p>19 A. Would say that I did things that I didn't do or</p> <p>20 bring things to my attention that he wouldn't bring to</p> <p>21 somebody else's attention.</p> <p>22 Q. Okay. Tell me what things he said you did that</p> <p>23 you didn't do.</p> <p>24 A. It was just -- the whole thing with my signature.</p> <p>25 You know, he would get my signature confused with</p>	<p style="text-align: right;">Page 176</p> <p>1 something on a form or something, and he would -- he</p> <p>2 would bring that to my attention but not to them.</p> <p>3 Q. So one example would be if you forgot to put</p> <p>4 something on a form?</p> <p>5 A. Correct.</p> <p>6 Q. What other examples of things did he point out to</p> <p>7 you that you felt he wasn't pointing out to others?</p> <p>8 A. Well, that's basically what you do.</p> <p>9 Q. So charting problems, basically?</p> <p>10 A. Correct.</p> <p>11 Q. So things that were either mischarted that he</p> <p>12 picked on you -- that he brought to your attention?</p> <p>13 A. Correct.</p> <p>14 Q. That were sloppily charted that he brought to</p> <p>15 your attention?</p> <p>16 A. Correct.</p> <p>17 Q. That were left off the chart that he brought to</p> <p>18 your attention?</p> <p>19 A. Correct. But he -- yes. Okay. Yes.</p> <p>20 Q. Things that were on the chart and then crossed</p> <p>21 out and rewritten, did he bring that to your</p> <p>22 attention?</p> <p>23 A. Probably.</p> <p>24 Q. Did he in fact ask Dr. DeVita to talk to you</p> <p>25 about charting problems generally?</p>

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1 A. Yes.
 2 Q. And did Dr. DeVita do that?
 3 A. Yes. But then he denied it. He said that he
 4 didn't -- he didn't mean for him -- or didn't want him
 5 to say anything or something. I don't know. But it
 6 was brought down to a lesser where I felt like it
 7 was -- made me feel like it was blown out of what it
 8 was supposed to be.
 9 Q. Tell me what happened so that I understand.
 10 A. Dr. DeVita told me that Dr. Chase was unhappy
 11 with my performance and that he would help me with the
 12 charting. As I've stated before, the charting was
 13 quite confusing to keep up with Dr. Chase, and I
 14 wasn't the only one that was confused about it, but
 15 his confusing -- his charting was quite confusing, and
 16 so when I brought it to Dr. Chase's attention and
 17 apologized to him for -- Dr. DeVita was gone,
 18 apologized to him for not being up to standards and
 19 asked him what I could do to better myself and he told
 20 me to get out of his office, and that was the last
 21 time that I really talked to him, and --
 22 Q. Do you --
 23 A. -- and Dr. DeVita got back and Mrs. Chase got
 24 back, spoke to her about it, and then was told that it
 25 wasn't -- it was blown out to be more than it was

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1 supposed to and Dr. DeVita shouldn't have told me what
 2 he told me and blah, blah, blah.
 3 Q. To the best of your recollection, what did
 4 Dr. Chase say to you when you went into his office to
 5 talk to him about the charting issues?
 6 A. That he was through. To get out.
 7 Q. That it was through?
 8 A. That he was through with me. To get out.
 9 Q. When did this take place, this whole series of
 10 conversations?
 11 A. Probably a few months after my employment. I
 12 don't know. I wasn't there that long, so --
 13 Q. Fall of 2002?
 14 A. Yup.
 15 Q. Just so I understand, then, you thought the
 16 charting was confusing, right?
 17 A. Correct.
 18 Q. And you had trouble keeping up with Dr. Chase and
 19 the charting process?
 20 A. Correct.
 21 Q. And you understood the nature of his complaints
 22 regarding your charting procedures, but you felt that
 23 he was treating you differently than the other techs?
 24 A. Correct.
 25 Q. Is the primary reason you left because you

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1 just -- you and Dr. Chase just couldn't work together
 2 anymore?
 3 A. Correct. I knew two weeks after employment that
 4 I didn't want to be there.
 5 Q. Why did you stick around as long as you did?
 6 A. Looking for another job.
 7 Q. So you were looking for another job from the
 8 third week you were with him?
 9 A. Yup.
 10 Q. Just took you ten months --
 11 A. A while to find an ophthalmology job, yes.
 12 Q. Other than complaints about charting, did
 13 Dr. Chase or the practice have other complaints that
 14 you were aware of regarding your performance?
 15 A. No.
 16 Q. Did they --
 17 A. No. Only maybe that I had to take time off
 18 because of my foster children.
 19 Q. Did you take some extra unpaid time off because
 20 of your foster kids?
 21 A. Yes.
 22 Q. Did you take extra paid time off or not?
 23 A. No. I always took it unpaid.
 24 Q. And you knew that that caused some staffing
 25 problems at the --

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1 A. Didn't cause staffing problem, because he wasn't
 2 there most of the time that I took off.
 3 Q. So you tried to schedule your unpaid vacation
 4 around his absences?
 5 A. Absolutely.
 6 Q. But you did know that that was an issue with the
 7 practice?
 8 A. Towards the end. But I didn't know that it was
 9 before, because I thought you were allowed to take
 10 time off if he wasn't there.
 11 Q. How -- why did you think that was the case?
 12 A. Because that's what people did. You took time
 13 off when he wasn't there.
 14 Q. Did you have a particular amount of paid
 15 vacation?
 16 A. Two weeks, I believe.
 17 Q. And was -- were you aware of having a particular
 18 amount of allowed unpaid vacation?
 19 A. No.
 20 Q. You just thought that if he wasn't there and it
 21 wasn't busy, you could take some unpaid vacation?
 22 A. Correct.
 23 Q. But that wasn't conveyed to you in a handbook or
 24 any written document; that's just what people did?
 25 A. There was a handbook.

45 (Pages 177 to 180)

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1 Q. Did that tell you you had unpaid vacation?
 2 A. It was confusing, and the document was changed.
 3 Q. While you -- was it changed while you were there?
 4 A. I believe so, yes.
 5 Q. Changed from what to what?
 6 A. Just making it more specific so that it wasn't
 7 confusing, because I didn't believe that it was a
 8 problem for me not to be there when he wasn't there.
 9 Q. Was it changed to make clear that unpaid vacation
 10 wasn't okay as a matter of course?
 11 A. Unless it was properly approved, I believe.
 12 Q. I'm going to show you what we've marked as Landry
 13 Deposition Exhibit 12. It's entitled Exit Interview
 14 at the top. Do you recognize this?
 15 A. Yes.
 16 Q. What is it?
 17 A. It's my exit interview.
 18 Q. Is it something that Brianne Chase wrote down to
 19 document what took place during your exit interview?
 20 A. Yeah, I'm sure.
 21 Q. Who else was at that exit interview?
 22 A. Mr. Green.
 23 Q. Okay. Take a look at this and tell me if it
 24 looks to you to be an accurate account of the exit
 25 interview?

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1 A. Correct.
 2 Q. And under number 3 you list as the top reason why
 3 you -- the thing you liked least about your job was
 4 working with Dr. Chase; is that right?
 5 A. Correct.
 6 Q. Now, this doesn't mention any concerns you had
 7 about Dr. Chase's ethics or the propriety of his
 8 recommending cataract surgery to patients, right?
 9 A. Right.
 10 Q. And that's because you didn't bring those things
 11 up in your exit interview, did you?
 12 A. No.
 13 Q. I'm going to show you what we've marked as Landry
 14 Deposition Exhibit No. 13. Take a look at that and
 15 let me know if you recognize it.
 16 A. Yup.
 17 Q. Is this a correct copy of the resignation letter
 18 that you gave --
 19 A. Yes.
 20 Q. -- to Dr. Chase's practice? I'm sorry?
 21 A. Yes.
 22 Q. Is it fair to say that you were politely not
 23 mentioning the real reason you were leaving in
 24 drafting this letter?
 25 A. Correct.

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1 Q. And nowhere in here do you mention Dr. Chase's
 2 ethics or the propriety of his cataract
 3 recommendation -- surgery recommendations as a reason
 4 for leaving, do you?
 5 A. No. Nowhere in there.
 6 Q. To whom did you communicate any concerns you had
 7 regarding Dr. Chase's ethics while you were working
 8 there?
 9 A. Dr. DeVita.
 10 Q. Tell me what you told Dr. DeVita.
 11 A. Told Dr. DeVita -- I mean, it wasn't just myself.
 12 It was the other technicians at the same time. But
 13 just told him that we didn't believe that he was doing
 14 cataract surgery on -- that he was doing unnecessary
 15 cataract surgery, told him that we felt that the
 16 stickie notes were -- it was wrong and that we didn't
 17 like having to do CST with BATs after dilation and
 18 after they've been through fields and their eyes are
 19 all dried out.
 20 Q. Anything else you complained about to Dr. DeVita?
 21 A. Well, the way that he treated me.
 22 Q. Anything else about Dr. Chase's cataract
 23 practices that you complained about to Dr. DeVita?
 24 A. Maybe. I don't know.
 25 Q. You got along well with Dr. DeVita, correct?

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1 A. Absolutely.
 2 Q. Were you friends?
 3 A. Co-worker friends.
 4 Q. When did you first articulate these concerns to
 5 Dr. DeVita?
 6 A. I don't know. Soon after employment.
 7 Q. Fall of --
 8 A. I mean, he -- yes.
 9 Q. Fall of 2002?
 10 A. Yes.
 11 Q. What was his response?
 12 A. That he was going to -- he was trying to
 13 establish something -- he was trying to get his own
 14 information so that he could bring it to Mrs. Chase's
 15 attention.
 16 Q. Do you know if he ever did bring concerns about
 17 Dr. Chase's cataract surgery practices to Mrs. Chase's
 18 attention?
 19 A. Yes, he did.
 20 Q. How do you know that?
 21 A. Because he told me, and he said that that was why
 22 he was laid off.
 23 Q. When did he tell you that?
 24 A. The day that -- the day that he was laid off,
 25 maybe the next day.

46 (Pages 181 to 184)

Page 185

1 Q. So this was spring of 2003?
 2 A. Yes.
 3 Q. Did he tell you when he brought these things to
 4 Mrs. Chase's attention?
 5 A. The night that he was laid off.
 6 Q. Did he tell you what her response was?
 7 A. No.
 8 Q. Did he tell you who else was -- who else he
 9 communicated these concerns to?
 10 A. No.
 11 Q. Just Mrs. Chase?
 12 A. Oh. And Stephen Green. They were together.
 13 Q. Did he communicate them to the two of them
 14 together?
 15 A. I believe so.
 16 Q. Is that what he told you?
 17 A. I believe so.
 18 Q. You said other technicians brought their concerns
 19 to Dr. DeVita's attention, as well; is that right?
 20 A. Correct.
 21 Q. Do you know who -- who did that?
 22 A. Melissa Lozier, Elaine Lampron, and Sandy Miller,
 23 and myself.
 24 Q. Did they articulate any concerns apart from those
 25 that you've already mentioned?

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1 A. Nope.
 2 Q. Were you present during their conversations with
 3 Dr. DeVita?
 4 A. Yes.
 5 Q. On how many occasions do -- did you or others
 6 bring these concerns to Dr. DeVita's attention?
 7 A. Almost daily.
 8 Q. Almost daily from the fall of 2002 until he left
 9 in the spring of 2003?
 10 A. Correct.
 11 Q. But until he left in the spring of 2003, you were
 12 unaware of him bringing these concerns to the
 13 attention of any of -- any other manager within the
 14 practice?
 15 A. Correct.
 16 Q. Do you know if he took your concerns to the
 17 Medical Practice Board at any point?
 18 A. Nope. I don't know.
 19 Q. Do you know, did any of your fellow technicians
 20 take their concerns to the Medical Practice Board, as
 21 far as you know?
 22 A. I don't know.
 23 Q. When Stephen Green -- Stephen Green came on board
 24 as the manager in late June or early July of 2003; is
 25 that right?

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1 A. Correct.
 2 Q. And you were still there at that point, right?
 3 A. Correct.
 4 Q. Did he, upon coming into the job, sit down to
 5 talk with all the employees about the practice?
 6 A. Yes.
 7 Q. Did it appear to you that he was coming -- that
 8 he was talking to the most disgruntled employees
 9 first?
 10 A. I was not disgruntled.
 11 Q. Okay. I'm sorry. Did he talk to the folks who
 12 had expressed concerns about Dr. Chase's practice
 13 first?
 14 A. Yes.
 15 Q. He talked to you?
 16 A. But not first. He talked to maybe two people
 17 before me.
 18 Q. What did -- what sort of -- when he -- did you go
 19 into his office to speak with him?
 20 A. In the laser room.
 21 Q. Did he call you in there to talk about the
 22 practice?
 23 A. Yes.
 24 Q. Did he give you forewarning that he was going to
 25 do that?

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1 A. Yes.
 2 Q. Did he ask you to sort of gather your thoughts
 3 about the practice?
 4 A. Yes.
 5 Q. When he called you in, did he ask you questions
 6 about the practice generally, or did he focus on
 7 issues surrounding cataract surgery?
 8 A. Both. It was general.
 9 Q. How many days after he began his job did this
 10 conversation take place?
 11 A. Within the week.
 12 Q. So within a week of arriving, he was interviewing
 13 you and asking you specific questions about the
 14 propriety of Dr. Chase's practices with regard to
 15 cataract surgery?
 16 A. Correct.
 17 Q. What did he ask you?
 18 A. I can't recall that. He just wanted to know what
 19 my relationship with Dr. Chase and Mrs. Chase was; he
 20 wanted to know if I was happy here, if I was not; how
 21 the patients' flow worked; he wanted to know about the
 22 charts and wanted to know about cataracts, cataract
 23 patients.
 24 Q. Did it strike you as odd that within a week of
 25 his arriving there he was asking you specific

47 (Pages 185 to 188)

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1 questions about the propriety of his boss's practices
 2 with regard to cataracts?
 3 A. Sure. Yes.
 4 Q. What did you think about that?
 5 A. I just felt he was just getting all his facts
 6 together. He was just -- wanted to know everything
 7 about the business when he -- that he was just -- just
 8 started working for.
 9 Q. Did you raise with him your concerns about
 10 Dr. Chase's ethics with regard to cataract surgery?
 11 A. Yes. But mostly about myself.
 12 Q. So you focused on your interpersonal difficulties
 13 with Dr. Chase?
 14 A. Yes.
 15 Q. But you did -- did you tell him about your
 16 concerns with, for instance, Post-its and reperforming
 17 CST with BATs?
 18 A. I believe so.
 19 Q. Did you tell him that you were already looking
 20 for another job at that point?
 21 A. Yes.
 22 Q. What prompted you to tell him that?
 23 A. I was being honest.
 24 Q. Did he --
 25 A. I wanted him to know so that if he needed to make

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1 last day?
 2 A. July 11th, '03.
 3 Q. So on that day as you left, he said you'll be
 4 better off and you'll understand in a couple of weeks?
 5 A. Yes.
 6 Q. And do you believe now that he was referring to
 7 the Medical Practice Board decision?
 8 A. Sure.
 9 Q. You're working for Dr. Cavin now?
 10 A. Yes.
 11 Q. What are you doing for him?
 12 A. Same thing as I did for Dr. Chase.
 13 Q. So you're working as a tech?
 14 A. Yes.
 15 Q. Do you also work as a scribe?
 16 A. Yes. It's the same. Yes.
 17 Q. Same system, basically?
 18 A. Basically.
 19 Q. Okay. Is -- who's your supervisor there?
 20 A. Dr. Cavin.
 21 Q. What types of tests are you performing on
 22 patients at Dr. Cavin's office?
 23 A. Auto refractions, and we don't -- we hardly do
 24 any Nideks or -- I mean -- we hardly do any
 25 refractions or CST with BATs, so it would just be

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1 other arrangements or whatnot, they could.
 2 Q. Were you -- had you already interviewed with
 3 Dr. Cavin's office at that point?
 4 A. I don't believe so.
 5 Q. So you didn't have any other prospect out there?
 6 A. No.
 7 Q. But you nonetheless told him that you were out
 8 there looking?
 9 A. Yes.
 10 Q. You said you had an exit interview with
 11 Mrs. Chase and Stephen Green, right?
 12 A. Correct.
 13 Q. On the day of your departure, did you have
 14 another conversation with Stephen Green regarding the
 15 circumstances for your departure?
 16 A. Just that he told me that -- told me goodbye,
 17 told me it was nice working with me, and to remember
 18 that I was normal and that -- that I was an
 19 exceptional person and that I was better off and that
 20 I would know that in a few weeks.
 21 Q. What day -- what was your last day at work?
 22 A. I don't know. It says it somewhere in here.
 23 Q. Was your exit interview on your very last day?
 24 A. Yes.
 25 Q. Okay. So whatever date that document is is your

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1 the -- bringing them into the room, doing a history,
 2 doing auto refractions if needed, and doing the
 3 anterior segment and dilating the patient.
 4 Q. You've said earlier that you did refractions at
 5 Dr. Chase's office.
 6 A. Yes.
 7 Q. In order to get their best corrected vision for
 8 the Snellen test, right?
 9 A. Yes.
 10 Q. It's true, though, that Dr. Chase, upon his exam,
 11 always rechecked the refraction, isn't it?
 12 A. Not always. You mean on myself or on others?
 13 Q. Oh, on -- just on -- on -- when the patient came
 14 into his exam room.
 15 A. He would look at it. Is that what you're asking?
 16 Q. Look at it and then see if it made sense --
 17 A. Yes.
 18 Q. -- and then check their vision with it?
 19 A. Yes.
 20 Q. So he always signed off on those refractions
 21 himself?
 22 A. Yes.
 23 Q. Do other techs at Dr. Cavin's office have formal
 24 training in ophthalmology technician?
 25 A. No.

48 (Pages 189 to 192)

Page 193

- 1 Q. Are there any -- do any of them have degrees or
 2 certificates in the field?
 3 A. One's an RN, two are LPNs, and ones an ophthalmic
 4 technician.
 5 Q. What's it mean to be an ophthalmic technician?
 6 A. You can get it through the schooling at home and
 7 on-job learning.
 8 Q. And is there an organization that confers a
 9 certificate?
 10 A. Yes.
 11 Q. You don't have that certificate?
 12 A. No. Not yet.
 13 Q. Did other techs at Dr. Chase's office have it?
 14 A. No. No.
 15 Q. And one tech at Dr. Cavin's office has it?
 16 A. Well, they all have it, and you were asking
 17 what's their formal education.
 18 Q. Um-hum.
 19 A. So their formal education would be RN, two LPNs.
 20 Q. So all of the other techs have -- at Dr. --
 21 A. You are an assistant technic- -- ophthalmic
 22 assistant or a technician.
 23 Q. And you don't have either of those certificates
 24 right now?
 25 A. Not yet.

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- 1 Q. Are you working towards them?
 2 A. Slowly, yes.
 3 Q. Are you happy in your job now?
 4 A. Absolutely.
 5 Q. Are you planning on staying there long term?
 6 A. Yes.
 7 Q. No plans to leave that job right now?
 8 A. No.
 9 Q. Is it your understanding that Dr. Cavin is happy
 10 with your performance?
 11 A. Yes.
 12 Q. Have you been told that the practice --
 13 A. Yes.
 14 Q. -- is happy with your performance?
 15 A. Absolutely.
 16 Q. Have you been told of any concerns they have
 17 regarding your performance?
 18 A. No.
 19 Q. Do you do glare testing there?
 20 A. Not often.
 21 Q. Do you have a contrast sensitivity test with the
 22 circles and the lines through it?
 23 A. No.
 24 Q. There isn't one in the office?
 25 A. No.

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- 1 Q. We talked about Ruth LeBlanc earlier --
 2 A. Um-hum.
 3 Q. -- and your run-ins with her. Have you had other
 4 run-ins with bosses other than Ruth and Dr. Chase?
 5 A. Nope.
 6 Q. Any difficult relationships with bosses other
 7 than those two?
 8 A. No.
 9 Q. Did you work for -- you said you worked for Paul
 10 Krusinski, correct?
 11 A. Yes.
 12 Q. Did you work for Glenn Goldman?
 13 A. Not really. He did Mohs surgery, and I didn't
 14 really assist with that, but he was part of the whole
 15 place.
 16 Q. Part of the dermatology practice?
 17 A. Yeah.
 18 Q. At Fletcher Allen?
 19 A. Yes.
 20 Q. Okay. Jane Beringer?
 21 A. Yes.
 22 Q. You worked with her?
 23 A. Yup.
 24 Q. Did you have good relationships with those folks?
 25 A. Yes.

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- 1 Q. I'm going to show you what we've marked as Landry
 2 Deposition Exhibit -- it's marked as 15. I'll keep it
 3 as that. We may have skipped some along the way. Do
 4 you recognize this letter?
 5 A. Yes.
 6 Q. Did you receive a copy of this letter from the
 7 Attorney General?
 8 A. Yes.
 9 Q. Do you remember when you received it?
 10 A. Two days after speaking with you.
 11 Q. Two days after we spoke the first time?
 12 A. Yes.
 13 Q. Did receiving this letter make you more reluctant
 14 to talk with me further outside of a deposition like
 15 this?
 16 A. No.
 17 MR. MILLER: I just need to take a quick
 18 break, look through my notes, and we'll be able to
 19 wrap up in very short order.
 20 MR. WINN: Okay.
 21 (A short break was taken.)
 22 BY MR. MILLER:
 23 Q. All right. Home stretch.
 24 MR. WINN: You said that an hour and a
 25 half ago.

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1 MR. MILLER: I did. But I mean it this
2 time.
3 Q. We were talking earlier about how some of the
4 techs in Dr. Cavin's office are accredited.
5 A. Correct.
6 Q. Were you offered the opportunity to take the
7 courses that would lead to that certificate while you
8 were working with Dr. Chase?
9 A. Yes. But you have to be there -- you have to be
10 employed as an ophthalmic technician for a year before
11 you qualify to do that.
12 Q. And did they offer to pay for the -- any courses
13 once you qualified to take them?
14 A. Yes.
15 Q. You mentioned that Dr. DeVita told you that he
16 believed he was laid off because he went to his
17 superiors with his concerns about Dr. Chase's
18 practice; is that right?
19 A. Yes.
20 Q. Did he give you -- did he tell you any other
21 reason why he was told he was laid off?
22 A. No. He could not -- well, no. Because the
23 numbers weren't there is what he was told. Yes, he
24 did.
25 Q. Meaning that he was told that he was not making

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1 the practice enough money to justify his continuing
2 on?
3 A. Correct.
4 Q. Did he tell you that he thought that was untrue?
5 A. Yes.
6 Q. So he believed that that was a pretext for -- for
7 letting him go? The financial reasons were just a
8 pretext?
9 A. Yes.
10 Q. And that the real reason he was being let go, he
11 told you, is that he was -- he had blown the whistle?
12 A. I wouldn't say it that way.
13 Q. What -- to the best of your recollection, what
14 exactly did he say to you about why he was laid off?
15 A. That he was laid off because he went to
16 Mrs. Chase and told her things about her husband that
17 he didn't -- that she did not like and he was laid
18 off.
19 Q. Did he specify to you what things he told her?
20 A. No. He could not, because he was trying to get
21 paid still.
22 Q. Did he tell you that?
23 A. Sort of, yes.
24 Q. In so many words?
25 A. Yes.

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1 Q. Meaning that he wasn't going to air the dirty
2 laundry to you because he was still hoping to pick up
3 a paycheck or two?
4 A. His settlement or whatever, yes.
5 Q. Severance?
6 A. Yes. Thank you.
7 Q. Sure. Have you recently applied for a job at the
8 VA?
9 A. Yes.
10 Q. And were you told that -- when did you apply for
11 that?
12 A. A little while back.
13 Q. Since you began working for Dr. Cavin?
14 A. Yes.
15 Q. And were you offered a job there?
16 A. Yes.
17 Q. But?
18 A. But I did not take it, and they were not able to
19 continue offering the job to me because they had a job
20 freeze.
21 Q. Would you -- so in the end there was no position
22 available for you?
23 A. Correct.
24 Q. Had there been a position available for you,
25 would you have taken it at that time?

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1 A. No.
2 Q. Why were you applying for another job?
3 A. Because I was just looking to see what was out
4 there. I was in the middle of this whole thing and
5 didn't know if I wanted to work in ophthalmology
6 anymore. I was trying to decide.
7 Q. And by "this whole thing," you mean the Chase
8 case?
9 A. Correct.
10 Q. Did you tell Dr. Cavin or his staff that you were
11 applying for other jobs?
12 A. Dr. Cavin. And it wasn't jobs. It was job.
13 Q. That's the only job you applied for?
14 A. Yes. Because Sandy said that it was a very good
15 opportunity of a lifetime, so I thought I would check
16 it out.
17 Q. Sandy who?
18 A. Miller.
19 Q. Sandy works with Dr. DeVita at the VA, correct?
20 A. Correct.
21 Q. Was the job that you applied for also working
22 with Dr. DeVita at the VA?
23 A. No.
24 Q. Was it in eye care?
25 A. Hearing.

50 (Pages 197 to 200)

Page 201

1 Q. Hearing care.
 2 A. Correct.
 3 Q. I want to make sure that you and I have covered
 4 together today all of the concerns that you grew to
 5 have about Dr. Chase's practice while you were there.
 6 First you had concerns about the way he treated you on
 7 an interpersonal --
 8 A. Correct.
 9 Q. -- level? You had concerns about the Post-its?
 10 A. Correct.
 11 Q. And your concern about the Post-its was not that
 12 the information was being recorded inaccurately but
 13 that it allowed Dr. Chase to place a glare test number
 14 in the space that you believe should have been
 15 reserved for Snellen vision?
 16 A. Correct.
 17 Q. And that's -- does that accurately describe the
 18 nature of your concern regarding the Post-its?
 19 A. Sure.
 20 Q. You had concerns about retesting CST with BAT
 21 after dilation?
 22 A. Correct.
 23 Q. And your concern there is that the test results
 24 were worse after dilation?
 25 A. Correct.

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1 Q. You had concerns about him pressuring people into
 2 surgery?
 3 A. Correct.
 4 Q. And we've -- have we covered today all the ways
 5 you felt he pressured people into surgery?
 6 A. Yes.
 7 Q. You had concerns that on one or two occasions he
 8 didn't send a cyst or a lesion to the lab for testing?
 9 A. Correct.
 10 Q. Have I missed anything?
 11 A. I don't believe so.
 12 Q. Before coming here today, you spoke with Attorney
 13 Winn?
 14 A. Correct.
 15 Q. How long did you meet with him?
 16 A. Forty minutes?
 17 Q. Where did you meet with him?
 18 A. At the office building at -- I don't know the
 19 name of it, but it's by CCV. Same building.
 20 Q. The Medical Practice Board's office?
 21 A. Yes.
 22 Q. Tell me about the nature -- tell me about the
 23 conversation you had with him.
 24 A. It was very brief. It was -- he showed me the
 25 list of names and told me that you would probably be

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1 bringing them up. I could not recall them then,
 2 cannot recall them now. And he just told -- told me
 3 we were going to walk down together. Nothing major.
 4 Q. For the other 35 minutes of the 40 minutes, what
 5 did you talk about?
 6 A. I don't -- I mean, we really didn't talk about
 7 much at all. I read over -- I spent most of my time
 8 reading this over.
 9 Q. What's that?
 10 A. Hold on. I'm trying to find it.
 11 Q. Sorry.
 12 A. Exhibit 4.
 13 Q. Exhibit 4 is the statement that you signed that
 14 Phil Ciotti wrote for you?
 15 A. Correct. And I just told him what I felt was
 16 inaccurate about that, but that was it.
 17 Q. What did Mr. Winn say when you told him that you
 18 thought portions of that were inaccurate?
 19 A. He just had me write them down, write down what I
 20 felt was inaccurate. That was it.
 21 Q. What else did you guys talk about?
 22 A. I believe that's it.
 23 Q. Did he give you any advice about how to answer
 24 questions?
 25 A. Yes.

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1 Q. What did he say?
 2 A. Just told me that just answer the answers the
 3 correct way and answer them the way that you -- answer
 4 them to the point.
 5 Q. Answer them what?
 6 A. To the point.
 7 Q. Did he ask you not to be expansive in your
 8 answers?
 9 A. He didn't tell me that. He just said answer to
 10 the point.
 11 Q. I'm trying to understand what that means when you
 12 say "answer to the point."
 13 A. Answer what you're asking.
 14 MR. MILLER: I think that's all I have,
 15 believe it or not.
 16 MR. WINN: I just have a few questions.
 17 EXAMINATION
 18 BY MR. WINN:
 19 Q. You indicated that you thought the word spiel was
 20 inaccurate in your statement. Did you discuss with
 21 Mr. Ciotti anything about Dr. Chase's interaction with
 22 patients?
 23 A. Yes.
 24 Q. What -- what did you tell him?
 25 A. I told him that I felt that patients often didn't

51 (Pages 201 to 204)

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1 understand, that he mumbled when talking a lot, and
 2 that I felt that he said the same things about
 3 cataract surgeries.
 4 Q. So that -- did you say anything about the nature
 5 of his statement as it related to patient -- to those
 6 cataract patients in general? Let me rephrase that.
 7 Did you -- did you say any -- give me your
 8 understanding of the definition of the word spiel.
 9 Did you say anything to Mr. Ciotti that would -- that
 10 would support his use of that word, in your
 11 understanding?
 12 A. Yes.
 13 Q. Can you tell me exactly what you told him?
 14 A. I told him that he -- that he would say the same
 15 thing about the cataracts, that you could walk into
 16 the bank and walk out and that it wasn't a ball
 17 bearing, that speech that he had to patients about
 18 cataracts.
 19 Q. And you objected to the use of the word "script"
 20 in the report.
 21 A. Correct.
 22 Q. In reference to the index card.
 23 A. Correct.
 24 Q. Was there any relationship between the index card
 25 and the -- and the discussion that Mr. -- that

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1 Dr. Chase had with his patients regarding cataract
 2 surgery?
 3 A. Yes.
 4 Q. What was the connection?
 5 A. You wrote down what he was -- the points of what
 6 he was saying.
 7 Q. So that -- so that the points in that script --
 8 or in that index card indicated the things Dr. Chase
 9 would say to cataract patients?
 10 A. Correct.
 11 Q. And you also objected to the use of the word
 12 "craft" records?
 13 A. Correct.
 14 Q. But you also testified that you believed results
 15 of this -- of the contrast sensitivity testing were
 16 put in the -- in the wrong area of the record,
 17 correct?
 18 A. Yes.
 19 Q. And why do you think that was done?
 20 A. I feel that it was so that the chart appeared to
 21 have -- the person appeared to have worse vision than
 22 what they had.
 23 MR. WINN: Okay. That's all I have.
 24 / / /
 25 / / /

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EXAMINATION

1 BY MR. MILLER:
 2 Q. You said patients -- in your opinion patients
 3 often didn't understand what Dr. Chase was saying.
 4 A. Correct.
 5 Q. Do you base that on the same confused look that
 6 we talked about earlier?
 7 A. Well, some patients would say things out in the
 8 dilation area or something. They would be talking
 9 amongst each other, and you would hear them talking
 10 about things like that.
 11 Q. Did you bring this potential confusion to
 12 Dr. Chase's attention?
 13 A. No.
 14 Q. You said that sometimes he mumbled?
 15 A. Yes.
 16 Q. Does that -- the fact that he mumbled -- strike
 17 that.
 18 You said that he said a lot of the same
 19 things about cataracts to all the patients whom he
 20 diagnosed with cataract surgery.
 21 A. Correct.
 22 Q. Does that make sense to you, that a doctor would
 23 say many of the same things to each patient who have
 24 the same symptoms -- the same disease?
 25

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1 A. Yes.
 2 Q. Do you agree that there's a value to making sure
 3 that each patient knows all the same risks and
 4 potential benefits from surgery?
 5 A. Yes.
 6 Q. And it would be a problem if each patient got
 7 different information about the same type of surgery?
 8 A. Correct.
 9 MR. MILLER: That's all I have.
 10 MR. WINN: No more.
 11 (The deposition concluded at 2:07 p.m.)
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52 (Pages 205 to 208)

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So now he just starts leaning into a "slit lamp" exam and he starts saying "Dense Central Nuclear Cataract OU" to the scribe. My perception is this is before he can even see anything! He also sometimes says "I fancy I see a cataract." He has an index card in the scribe room (Exam room). It is taped onto the machine. He has this for the scribe because he says the same thing each time about cataracts, and it helps the scribe know the points to put down on the papers. So we can just look at the index card and record on the chart what it says. There is a big push for surgeries until he had his 9 scheduled for the week, but then it is not as bad. Prior to that it seems EVERY patient in the target group gets told they have cataracts.

In his general speech about cataracts he tells every patient "you don't need a second opinion, I'm going to give you a second opinion." The speech about cataracts is verbatim almost every time. If a question gets inserted he sometimes starts over from the beginning like it broke his train of thought and he needed to start from the beginning.

I feel Dr. Chase practices unethically. The other Techs and I would frequently "vent" to Dr. Devita. We would try to steer patients to him when we could because I think he's a good doctor. He wanted to talk to Steve Green to get this to stop but I heard he got layed off so I don't think it helped. We all knew this was wrong.

I brought my concerns about how Dr. Chase treated me to his wife. She said he's set in his ways. She has made him come in to apologize to employees for things but she wasn't around enough to make any real difference. The Techs would frequently talk amongst each other about patients getting cataract surgery potentially needlessly, almost daily. It was a joke but it wasn't. If an elderly patient came in with no vision problems, didn't drive, maybe for a regular check-up or to have their glasses checked, we would say watch, they'll be told they have cataracts and sure enough! they would get told that.

Dr. Devita used to tell patients that even if they had slight cataracts if they did not think the cataracts are a real problem, they could live with them. Dr. Chase and Dr. Devita got into arguments over the post-its,

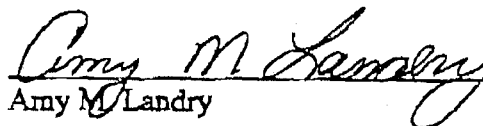
over who should see patients with cataracts, etc. I know Dr. Devita had a meeting with Mrs. Chase and Steve Green and told them he thought things were wrong and unethical. But he got layed off.

On one patient's chart, I saw where Dr. Chase wrote down the Snellen and CST with BAT results. Dr. Chase wrote that she wanted cataracts removed when she did not. He also had it noted the HE gave a 2nd opinion. That language on the chart is what is on the script given to the Techs.

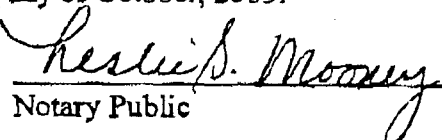
Another concern I've had was I've seen on at least two occasions he removed lesions or cysts on eyelids. He never sent those tissues in for pathology to check for cancer, and I never thought that was right.

FURTHERMORE this affiant sayeth not.

DATED at Burlington, Vermont, this 28th day of October, 2003.


Amy M Landry

Subscribed and sworn to before me this 28th day of October, 2003.


Notary Public

LESLIE S. MOONEY
Vermont Notary Public
Commission Expires 2-10-07

S:\24585\001\Legal\Affidavit of Amy M Landry.wpd

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VIA HAND DELIVERY

February 17, 2004

Joseph L. Winn, Esq.
ATTORNEY GENERAL'S OFFICE
109 State Street
Montpelier, VT 05609-1001

Re: In re: David S. Chase MD Docket No. MPC 15-0203

Dear Joe:

Enclosed please find a copy of Respondent's Motion to Reinstate License and to Dismiss Superseding Specification of Charges, filed with the Board today. I write to provide you with additional background on one of the arguments contained in the Motion.

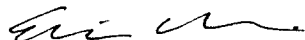
As one of his arguments in favor of dismissal, Respondent contends that the State violated Vermont Rule of Professional Conduct 3.4(f) when it requested that third-party witnesses not speak with this office outside the presence of the State. After careful research and consideration, we believe that the State's ethical violation was clear-cut, serious, and highly prejudicial to Dr. Chase. As a result, we had no choice but to include it as one of the bases for our Motion.

However, after equally careful consideration, we do not believe that this ethical violation "raises a substantial question as to [the State's] honesty, trustworthiness, or fitness as a lawyer in other respects," as required to trigger the reporting requirements of Vermont Rule of Professional Conduct 8.3(a). As a result, we have not reported the State's ethical violation to the appropriate professional authority.

If you have any questions, please call me.

Sincerely yours,

SHEEHEY FURLONG & BEHM P.C.



Eric S. Miller

ESM/khs

F:\WP\DOC\S.C. Chase\David MD MedPhBd correspondence\Winn20.doc

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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER
05609-1001

December 11, 2003

VIA FACSIMILE

Eric S. Miller, Esq.
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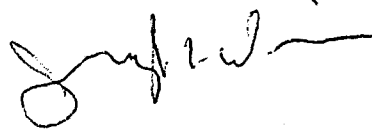
Re: *In re: David Chase:*
MPC 15-0203

Dear Eric:

In response to your fax of this date I suggest you reread my cover letter that accompanied the additional discovery. I have given you copies of everything in my files required under the Board rules regarding the complaints that are the basis of the Superseding Specification of Charges. I do not believe there is anything more in the Board files regarding those complaints, as the normal practice is to copy the AG's office on anything the Board receives. However, as stated in my letter of December 10, you have access (during regular business hours) to the Board files of the thirteen complainants to review and make copies at your expense. As you know, not even under the civil rules does "production" mean that a party is required to review and copy files for another party. Production can be accomplished simply by allowing access to files.

On another issue I take strong exception to your characterization of the State's communications with witnesses as "improper." The State has as much right as the Respondent to contact witnesses and communicate the State's preferences as to how interviews should be conducted. The State is not discouraging witnesses from speaking with Respondent. The State is only stating its preference that such communications take place in a deposition with the State present. The witnesses are free to do as they wish, notwithstanding what either party wishes. If the State's communication with the witnesses violates some statute, regulation, or ethical rule, please cite to me such statute, regulation, or rule. In the absence of such citations, the State suggests that Respondent be more circumspect when making accusations of impropriety.

I look forward to hearing from you regarding the scheduling of the depositions of Dr. Chase and his wife.

A handwritten signature in black ink, appearing to read 'Joseph L. Winn', with a stylized, flowing script.

Joseph L. Winn
Assistant Attorney General

cc: Phil Ciotti, Investigator (fx only)